

PLANNING COMMITTEE – 12 AUGUST 2021

PART I – DELEGATED

7. **21/1194/FUL - Conversion of existing dwellinghouse to two self-contained dwelling units at 48 ALTHAM GARDENS, SOUTH OXHEY, WD19 6HJ**

Parish: Watford Rural Parish Council
Expiry of Statutory Period: 11.08.2021
Extension of time: 12.09.2021

Ward: South Oxhey
Case Officer: David Heighton

Recommendation: That the decision be delegated to the Director of Community and Environmental Services to GRANT PLANNING PERMISSION subject to the completion of a Section 106 Agreement.

Reason for consideration by the Committee: This application was called in by three Members of the Planning Committee on the grounds that the upstairs flat is a three bedroom flat and is deficient on parking, and due to concerns with the entrances to the gardens.

1 **Relevant Planning History**

- 1.1 98/0821 - (Outline) Erection of new Residential Development together with new Public Open Space.
- 1.2 02/00719/AOD - (Approval of Details) Erection of 118 dwellings, day nursery and provision of public open space and associated access road.
- 1.3 12/0839/FUL - Single storey rear conservatory, conversion of garage to habitable space. Implemented.
- 1.4 16/0326/PDE - Prior Approval: Single storey rear extension (depth 6 metres, maximum height 2.93 metres and eaves height 2.7 metres). Withdrawn.
- 1.5 16/1012/FUL - Single storey rear extension and front porch. Permitted and part implemented.

2 **Description of Application Site**

- 2.1 The application site contains a three storey end of terrace dwelling occupying a corner plot on the southern side of the northern arm of Altham Gardens, South Oxhey. The streetscene contains a mix of two storey and three storey dwellings of similar style.
- 2.2 To the front elevation the dwelling and the remainder of the row feature first floor level Juliet balconies. There is a paved driveway with provision for one off street car parking space to the frontage. It is noted that the dwelling previously had an integral garage however, this has been previously converted to habitable accommodation. There is also an existing storm porch to the front elevation of the dwelling.
- 2.3 The application dwelling has implemented the single storey rear extension approved under planning application 16/1012/FUL.
- 2.4 To the rear is an enclosed garden of a modest size. A close boarded fence of approximately 1.8m high adjoins the boundary with the highway. It is noted that both side boundaries at the application site are splayed. The dwelling is finished in a multi-red brick.

3 **Description of Proposed Development**

- 3.1 This application seeks full planning permission for the conversion of existing dwellinghouse to two self-contained flats.

- 3.2 The dwelling as existing has 3 bedrooms with 1 bedroom within the ground floor and 2 bedrooms within the second floor. It is proposed to separate the ground floor from the remainder of the dwelling such that the building would have 2 self-contained flats.
- 3.3 The submitted plans indicate that the flat at ground floor level would be a 1 bedroom flat. It is proposed to convert and incorporate the part implemented single storey rear extension into a kitchen/dining area. There will also be a utility, storage and shower/WC. The ground floor will be accessed through the front door and lobby area.
- 3.4 The submitted plans indicate that the upper flat would be split over first and second floor levels and would be a two bedroom flat. There will be a bedroom and kitchen/dining area at first floor level. There would be a living room, another bedroom with an en-suite bathroom, a shower/WC and a storage area at second floor level.
- 3.5 Both flats would be accessed through the same front access door, with a communal entrance leading to an internal entrance door to the ground floor flat and stairs leading to the upper flat. The rear garden would be split into two sections, one for each flat, each with bin storage and a side access gate.
- 3.6 The submitted plans indicate that the existing hardstanding would be extended to provide 2 parking spaces (1 additional space). It is assumed this would be 1 allocated space per unit. There would be no loss of soft landscaping.

4 Consultation

4.1 Statutory Consultation

- 4.1.1 Watford Rural Parish Council: [No comments received, any comments received will be verbally updated]
- 4.1.2 National Grid: [No comments received, any comments received will be verbally updated]
- 4.1.3 Highways Officer: [No Objection]

Decision

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.

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) 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 3) 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 for the conversion of existing dwellinghouse to two self-contained dwelling units at 48 Altham Gardens, South Oxhey. Altham Gardens are a dead-end 30 mph unclassified local access route that is highway maintainable at public expense.

Vehicle Access

Altham Gardens is a shared use service with the kerbs being directly in line with the road network. 48 has two allocated off-street parking spaces which it will divide between the two new dwellings. No alterations to the highway network has been proposed. Parking is a matter for the local planning authority (LPA) and therefore all parking arrangements must be deemed acceptable by them. Secure cycle parking has been offered at the rear of the property for both dwellings.

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 dwelling is within the recommended emergency vehicle access of 45 metres from the highway to all parts of the building. 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'.

Conclusion

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

4.2 Public/Neighbour Consultation

4.2.1 Number consulted: 18 No of responses received: 3

4.2.2 Site Notice: not applicable

Press Notice: not applicable

4.2.3 Summary of Responses: 3 – (Objections)

- Building materials obstructing vehicles
- Lack of parking

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

6.1.1 In July 2021 the revised 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 2021 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”.

6.1.2 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 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, DM4, DM6, DM8, DM10, DM13 and Appendices 2 and 5.

6.3 Other

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.

Affordable Housing Supplementary Planning Document - Approved June 2011.

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

Technical Housing Standards - nationally described space standard document published in March 2015 (for guidance only).

7 Planning Analysis

7.1 Principle of Development

7.1.1 The proposed development would result in a net gain of one dwelling. The site is not identified as a housing site in the 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.

7.1.2 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.

7.1.3 The application site is located within South Oxhey, which is within a designated settlement boundary identified as a Key Centre in the Core Strategy. This strategy is supported by Policy PSP2 of the Core Strategy which states that future development will predominantly be focused on sites within the urban area. The Spatial Strategy of the Core Strategy advises that Key Centres will provide approximately 60% of the District's housing requirements over the Plan period to include 45% of affordable housing. There is scope for continued infilling with urban area, primarily on previously developed land, subject to the protection of existing residential and historic character and amenities.

7.1.4 The conversion of the existing property into two self-contained flats would be located on previously developed land. Given the location of the site within the Key Centre of South Oxhey, there is no in principle objection to the subdivision of the site subject to compliance with the Policies set out in the Core Strategy (adopted October 2011) and the Development Management Policies LDD (adopted July 2013) and subject to assessment against all other material considerations as discussed below.

7.2 Affordable Housing

7.2.1 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.

7.2.2 The LPA is satisfied that the evidence at Appendix A enables more weight to be attached to the need to comply with Policy CP4 of the Core Strategy. The most up to date evidence confirms that small site contributions make a material contribution to affordable housing within the District. As such, applications will continue to be assessed in accordance with the requirements of the Development Plan and will seek monetary contributions on developments resulting in a net gain of one to nine dwellings unless viability demonstrates otherwise.

7.2.3 The proposed development would result in a requirement for a commuted sum of £14,673.75 towards affordable housing based on a habitable floor-space of 83.85sqm /2 = 41.925sqm multiplied by £350 per sqm, which is the required amount in the Oxhey and Watford Fringe Three Rivers' market area.

7.2.4 The applicant has agreed to pay the required affordable housing contribution and a S106 Agreement is being drafted to secure this. Subject to the completion of the Section 106 Agreement, the proposed development would comply with the requirements of Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011).

7.3 Impact on Character and Street Scene

7.3.1 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'.

7.3.2 Policy CP3 of the Core Strategy states that the Council will promote high quality residential development that respects the character of the District and caters for a range of housing needs. Development will make the most efficient use of land, without compromising the quality of the environment and existing residential areas. The NPPF at paragraph 127 emphasises the importance of good design and at paragraph 130, part (f) it states create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users [my emphasis]; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

7.3.3 Policy DM1 of the Development Management Policies document outlines that proposals for the conversion of single dwellings into two or more units will generally be acceptable where;

- i) the building is suitable for conversion by reason of its size, shape and number of rooms. Normally, only dwellings with three or more bedrooms will be considered suitable for conversion.
- ii) The dwellings created are completely self-contained, with separate front doors either giving direct access to the dwelling, or a secure communal lobby or stairwell which itself has a secure entrance
- iii) Adequate car parking, services and amenity space can be provided for each new unit in compliance with the Council's standards
- iv) The character of the area and the residential amenity of immediate neighbours are protected
- v) If conversion of semi-detached dwellings is proposed, generally this takes place in pairs in order that privacy and the amenities of the occupants of the adjoining dwelling are maintained.

7.3.4 The Council will take into account the individual and cumulative effect of applications for development on the character of an area, and will resist piecemeal development in favour of comprehensive proposals that properly address the criteria above.

- 7.3.5 The application site is located within a residential area within South Oxhey. The application building currently consists of a single residential house which has 3 bedrooms. As there are 3 bedrooms within the existing dwelling, it is considered that the dwelling is suitable for conversion in accordance with Policy DM1 of the Development Management Policies Document.
- 7.3.6 Having regard for the internal area of each flat, it is acknowledged that within Table 1 of the Technical Housing Standards – nationally described space standard document published in March 2015 - one bedroom flat for 1 persons should have a minimum area of 39sqm and for two persons should have a minimum area of 50sqm; and a two bedroom flat for three to four persons, an area of between 70sqm and 79sqm. According to the submitted floor plans, the internal floor area for the ground floor flat would be approximately 50sqm. Thus, it would be adequate for 1 or 2 persons. The upper unit (first and second floor) internal floor area would be of approximately 74sqm. Therefore, would be adequate for up to 3 persons. Therefore, the conversion of the single dwelling into two flats given its existing residential nature and retention of internal floor space would be compliant with the guidance within the Technical Housing Standards and considered acceptable in this regard.
- 7.3.7 The proposed flats would be contained within the existing built form including the single storey rear extension, approved under reference 16/1012/FUL. As such, the sub-division of the existing dwelling to two self-contained residential units would not result in a material change to the external appearance of the existing dwelling.
- 7.3.8 The surrounding area is characterised by residential dwellings and there are some visible flatted residential units located to the west side of Altham Gardens. It is also noted that there would be no alterations to the existing fenestration to accommodate the conversion. Thus, the existing external characteristics of the building would be retained. It is therefore considered that the proposed conversion of the dwelling to introduce two self-contained flats would not be out of character within the wider area nor would it appear distinctly different or alter the character of the existing dwelling.
- 7.3.9 There have been concerns raised as to the number of potential bedrooms in the upper flat. The submitted plans indicate the use of the upper flat at first and second floor level would be as a two bedroom flat. This would be subject to a condition, being built and permanently retained in accordance with the approved plans, which would be enforceable.
- 7.3.10 In terms of stacking, it is considered that the living room to the upper-floor flat is more suitably located at second floor level than at first floor level above the bedroom of the ground floor flat. The submitted floor plans also indicate that the flats would be accessed via the existing entrance with the addition of two internal entrance doors, one at ground floor level and at the top of the staircase for the upper flat. Car parking and amenity are considered in the relevant sections below.
- 7.3.11 In summary, it is not considered that the proposed development would result in any significant adverse impact on the character or appearance of the host dwelling, streetscene or area and the development would be acceptable in this regard in accordance with Policies CP1 and CP12 of the Core Strategy and to Policy DM1 and Appendix 2 of the Development Management Policies.

7.4 Impact on amenity of neighbours

- 7.4.1 Policy CP12 of the Core Strategy advises that development will be expected to protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space. Policy DM1 and Appendix 2 of the Development Management Policies LDD set out that development should not result in loss of light to the windows of neighbouring properties not allow overlooking, and should not be excessively prominent in relation to adjacent properties.

- 7.4.2 The proposed conversion from one dwelling to two self-contained flats would not result in significant intensification of the use or in additional harm to neighbouring occupiers in comparison to the existing situation so as to adversely affect their residential amenity. The floor plans show that the proposed kitchen at first floor level would be set away from the adjoining neighbour No. 46.
- 7.4.3 It is not considered that there would be an unacceptable relationship so as to result in unacceptable living conditions for future occupiers of the each unit.
- 7.4.4 It is additionally noted that no further built form is proposed at part of this application nor the addition or alteration of any fenestration. Thus, the existing built form and outlook would be retained as existing.
- 7.4.5 As such, the proposed conversion would not result in an adverse impact upon any neighbours and would be acceptable having regard to Policy C12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies document (adopted July 2013).

7.5 Amenity Space Provision for future occupants

- 7.5.1 Policy CP12 of the Core Strategy states that development should take into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space and section 3 (Amenity Space) of Appendix 2 of the Development Management Policies document. These standards include:

Flats: One bed – 21 sqm

Additional bedrooms – 10 sqm each (space can be allocated specifically to each flat or communally)

- 7.5.2 The proposed development is for the creation of one one-bedroom flat, which should provide 21sqm amenity space and a two bedroom flat which should have 31sqm, therefore resulting in an overall requirement for 52sqm of private amenity space in accordance with the above Standards.
- 7.5.3 The proposal includes 49sqm of amenity space. The existing rear amenity space is proposed to be sub-divided with 1.8m high timber fencing with the ground floor one-bedroom flat allocated 22sqm and the upper floor two-bedroom flat being allocated 27sqm, the latter which would be accessed via an additional side gate.
- 7.5.4 Given the rear amenity space is 49sqm, there would be a shortfall of only 3sqm. Given this minimal shortfall and the close proximity to open public amenity land, Chilwell Gardens Play Area – approximately 0.1 miles (2 minutes walking distance) and Ashridge Play Area and Prestwick Meadows - approximately 0.3 miles (6 minutes walking distance), it is not considered that the proposed private amenity space provision would justify refusal of the current application.

7.6 Highways, Access and Parking

- 7.6.1 Core Strategy Policy CP10 requires development to provide a safe and adequate means of access and to make adequate provision for all users, including car parking. Policy DM13 and Appendix 5 of the Development Management Policies document set out parking standards. Provision must also be made for cycle parking facilities for a new dwelling.
- 7.6.2 Appendix 5 of the Development Management Policies LDD sets out the following parking standards:

1 bedroom dwellings – 1.75 spaces per dwelling (1 assigned space)

2 bedroom dwellings – 2 spaces per dwelling (1 assigned space)

The proposed development would therefore generate a total parking requirement of 3.75 spaces for the converted residential use. One allocated space would need to be provided to serve each unit.

- 7.6.3 The submitted plans indicate 2 vehicles could be accommodated on-site with 1 space for the ground floor flat and 1 space for the upper floor flat. As such there would be a shortfall of 1.75 car parking spaces, although the required number of assigned spaces would be provided.
- 7.6.4 It is noted within the design and access statement that the front porch granted under 16/1012/FUL will not be implemented and this is omitted from the proposed plans. As such parking for 2 vehicles can be provided on the site frontage.
- 7.6.5 It is also noted that there is concern raised by neighbours with regards to parking. However, it is also noted that there are no parking restrictions on the street or objections from the Highway Authority in relation to highway safety. Therefore, given that the required number of assigned spaces are provided, on balance it is considered that the proposed development is acceptable in parking terms and that the shortfall of 1.75 spaces would not result in demonstrable harm to justify refusal of planning permission.
- 7.6.6 The provision of cycle storage has been included within the rear amenity space for each flat.

7.7 Trees

- 7.7.1 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'.
- 7.7.2 No trees would be affected by the proposed development.

7.8 Refuse and Recycling

- 7.8.1 Policy DM10 (Waste Management) of the Development Management Policies LDD (adopted July 2013) 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.
- 7.8.2 A refuse enclosure has been indicated on the plans within each of the rear amenity areas. The proposed bin storage areas would each have a minimum width of 1.2m with a depth of 1m and would have a flat roof form measuring 1.2m in height in timber to match the appearance of the timber fencing.
- 7.8.3 The storage areas would be considered of sufficient size to accommodate two bins in each. The refuse/recycling provision proposed is considered acceptable in accordance with Policy CP1 of the Core Strategy and Policy DM10 of the Development Management Policies LDD. It is noted that the bins would need to be moved by the occupiers to the front of the property on collection day.

7.9 Wildlife and Biodiversity

7.9.1 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.

7.9.2 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.

7.9.3 The application has been submitted with a Biodiversity Checklist, which states that no protected species or biodiversity interests will be affected as a result of the application.

7.10 Planning Balance

7.10.1 The LPA cannot currently demonstrate a 5 year housing land supply, and therefore paragraph 11 of the NPPF (2021) is engaged. Paragraph 11 and footnote 8 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."

7.10.2 The NPPF identifies that there are 3 dimensions to sustainable development: social, economic and environmental. In terms of social benefits, the proposal would provide an additional dwelling and would provide a policy compliant commuted sum towards the provision of affordable housing elsewhere within the District and there would be no adverse impacts to neighbouring or future occupiers. Whilst limited, the economic benefits of the scheme includes the ability for the future occupiers to support the local economy by using local amenities. In terms of the environmental benefits, the principle of residential development is acceptable in this location.

7.10.3 In summary it is considered that whilst paragraph 11 of the NPPF is engaged the identified adverse impacts of the development would not significantly and demonstrably outweigh the benefits and therefore planning permission should be granted.

8 **Recommendation**

8.1 **That the decision be delegated to the Director of Community and Environmental Services to GRANT PLANNING PERMISSION subject to the completion of a Section 106 Agreement and subject to the following conditions:**

8.2 Conditions

C1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91(1) of the Town and Country Planning Act 1990 and as amended by the Planning and Compulsory Purchase Act 2004.

- C2 The development hereby permitted shall be implemented and permanently maintained in accordance with the following approved plans: 21118.PA101, SNP.PA 2021.PA102 Rev P01, SNP.PA 2021.PA103 Rev P01 (received 26.07.2021), SNP.PA 2021.PA104 Rev P01, SNP.PA 2021.PA105 Rev P01 (received 22.07.2021), SNP.PA 2021.PA106 Rev P01 (received 22.07.2021).

Reason: For the avoidance of doubt and in the proper interests of planning in accordance with Policies PSP3, CP1, CP2, CP3, CP4, CP8, CP9, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM4, DM6, DM8, DM10, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).

- C3 Prior to the first occupation of the development hereby permitted the proposed on-site car parking shall be laid out in accordance with the approved plans and retained thereafter available for that specific use.

Reason: In the interests of highway safety and convenience in accordance with Policies CP1 and CP10 of the Core Strategy (adopted October 2011) and Policy DM13 and Appendix 5 of the Development Management Policies LDD (adopted July 2013).

- C4 Prior to the first occupation of the development hereby permitted, the subdivision of the rear garden and installation of boundary treatments shall be implemented and shall be permanently maintained as such thereafter.

Reason: To ensure that appropriate boundary treatments are proposed to safeguard the amenities of neighbouring properties and the character of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

- C5 The bin store enclosure shall be built in accordance with drawing number SNP.PA 2021.PA105 Rev P01 (dated 22.07.2021) prior to the first occupation of the development hereby approved and shall be kept permanently available for the occupiers of the two flats and permanently maintained thereafter.

Reason: To ensure that satisfactory refuse and recycling provision is maintained for the residents of the flats in accordance with Policy DM10 of the Development Management Policies document (adopted July 2013).

- 8.1 Informatives:

- I1 With regard to implementing this permission, the applicant is advised as follows:

All relevant planning conditions must be discharged prior to the commencement of work. Requests to discharge conditions must be made by formal application. Fees are £116 per request (or £34 where the related permission is for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). Please note that requests made without the appropriate fee will be returned unanswered.

There may be a requirement for the approved development to comply with the Building Regulations. Please contact Hertfordshire Building Control (HBC) on 0208 207 7456 or at buildingcontrol@hertfordshirebc.co.uk who will be happy to advise you on building control matters and will protect your interests throughout your build project by leading the compliance process. Further information is available at www.hertfordshirebc.co.uk.

Community Infrastructure Levy (CIL) - Your development may be liable for CIL payments and you are advised to contact the CIL Officer for clarification with regard to this. If your development is CIL liable, even if you have been granted exemption from the levy, please be advised that before commencement of any works it is a requirement under Regulation 67 of The Community Infrastructure Levy Regulations 2010 (As Amended) that CIL form 6 (Commencement Notice) must be completed, returned and acknowledged by Three Rivers District Council before building works start. Failure to do so will mean you lose the right to payment by instalments (where applicable), and a surcharge will be imposed. However, please note that a Commencement Notice is not required for residential extensions IF relief has been granted.

Care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense.

Where possible, energy saving and water harvesting measures should be incorporated. Any external changes to the building which may be subsequently required should be discussed with the Council's Development Management Section prior to the commencement of work.

- 12 The applicant is reminded that the Control of Pollution Act 1974 allows local authorities to restrict construction activity (where work is audible at the site boundary). In Three Rivers such work audible at the site boundary, including deliveries to the site and running of equipment such as generators, should be restricted to 0800 to 1800 Monday to Friday, 0900 to 1300 on Saturdays and not at all on Sundays and Bank Holidays.
- 13 The Local Planning Authority has been positive and proactive in its consideration of 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 suggested modifications to the development during the course of the application and the applicant and/or their agent submitted amendments which result in a form of development that maintains/improves the economic, social and environmental conditions of the District.
- 14 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 website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.
- 15 Obstruction of public highway land: 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 website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.
- 16 Road Deposits: It is an offence under section 148 of the Highways Act 1980 to deposit mud or other debris on the public highway, and 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 are in a condition such as not to emit dust or deposit mud, slurry or other debris on the highway. Further information is available via the website

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or by telephoning 0300 1234047.

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 31st 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 11th May 2016 the Court of Appeal reversed the High Court decision. The NPPG was subsequently amended to reflect the WMS on 19th May 2016.
- 1.2 In light of the above developments, between November 2014 and August 2015 and May 2016 and 1st September 2017 the Council gave greater weight to the WMS policy and associated NPPG guidance in it than to adopted Policy CP4 of its Core Strategy in respect of development proposals for 10 dwellings or less and which had a maximum combined gross floor area of 1000 sq metres. However, having undertaken an analysis 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 1st 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 24th July 2018 a new version of the National Planning Policy Framework¹ (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:

¹ 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 £3.8million² 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.

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

² 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 April 2017 to 31 March 2020, 177 planning applications for residential development involving a net gain of dwellings were determined³ 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":

"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

³ Includes refused and approved applications. Excludes prior approval developments.

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 2016⁴, 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)
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	Three Rivers	£325,000.00

Table 1.

Since the publication of the above ONS data in 2016, the general house price affordability position has grown worse. According to data published by the Office of National Statistics (ONS), the lowest quartile house price in Three Rivers in September 2019 was £347,000⁵. The lowest quartile house price of £347,000 continues to place Three Rivers as the seventh

⁴ ONS (2020) *Dataset: House price to residence-based earnings ratio Table 6a*
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

⁵ Office for National Statistics (2020) *Dataset: House price to residence-based earnings ratio Table 6a*
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

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	Three Rivers	£347,000

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 earnings⁶). 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 ratio⁷ 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 ⁸ (2016)
1	South Bucks	14.49
2	Hertsmere	14.23
3	Mole Valley	14.18
4	Elmbridge / Chiltern	13.87
5	Three Rivers	13.77

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 14.53⁸, 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,

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

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

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

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 ¹ (2019)
1	Isles of Scilly	17.71
2	Mole Valley	14.87
3	Three Rivers	14.53

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.⁹

2.7 The SHMA also looked into newly-arising (projected future) need within the District, which was accepted as arising from newly forming households and existing households falling into this need. In South West Herts, the SHMA estimated a need totalling 2,760 new households per annum from 2013-2036. 15% of this need falls within Three Rivers, which equates to an estimated level of affordable housing need in the District from newly forming households of 419 per annum.

2.8 With these figures in mind, the SHMA calculated the net affordable housing need within the five local authority areas of the South West Herts area as being 54,997 units over the 23 year period from 2013 to 2036. This is 2,391 units per annum.¹⁰ 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.

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

¹⁰ Table 38: South West Hertfordshire Housing Market Assessment (January 2016). Net need = Current Need + Need from Newly-Forming Households + Existing Households falling into Need – Supply of Affordable Housing.

2.11 In the latest monitoring period of 2019/20 (financial year), 17 sites¹¹ 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 determined¹² 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 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

¹¹ Sites with completions in 2019/20

¹² Includes refused and approved applications. Excludes prior approval developments.

(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: 3156661), 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.”¹³

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 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: 21st 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: 27th 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 5th 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: 1st 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

¹³ Paragraph 7, Planning Inspectorate Letter, March 2017.

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 22nd 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 11th 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 Councils evidence the District is the 7th 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 22nd 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 5th 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 16th 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 9th 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 7th 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: 21st 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/egcl-page/core-strategy>
2. Annual Monitoring Report 2019/2020 (December 2020)
<http://www.threerivers.gov.uk/egcl-page/annual-monitoring-report>
3. Affordable Housing Supplementary Planning Document (June 2011)
<http://www.threerivers.gov.uk/egcl-page/supplementary-planning-documents>
4. South West Hertfordshire Strategic Housing Market Assessment (January 2016)
<http://www.threerivers.gov.uk/egcl-page/shma-and-economic-study-for-future-review-of-local-plan>
5. Office of National Statistics Housing Data 2002-19
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

December 2020