

PLANNING COMMITTEE – Thursday 23 February 2023

22/1830/FUL – Construction of two bedroom detached dwelling to rear of 4 Scots Hill accessed via Windmill Drive with associated access, parking and landscaping, boundary treatments including timber fence at 4 SCOTS HILL, CROXLEY GREEN, HERTFORDSHIRE, WD3 3AD.
(DCES)

Parish: Croxley Green Parish Council Ward: Dickinsons
Expiry of Statutory Period: 02.03.2023 (Agreed Case Officer: Freya Clewley
Extension)

Recommendation: That Planning Permission is granted following completion of a S106 agreement to secure an affordable housing financial contribution.

Reason for consideration by the Committee: The application was called in by Croxley Green Parish Council due to concerns regarding overdevelopment, lack of amenity space and parking as set out in full at 4.1.1 below.

1 Relevant Planning History

- 1.1 11/1782/FUL - New shop front windows and doors with refurbished signs – Permitted 07.10.2011.
- 1.2 12/2281/FUL – Two storey rear extension, single storey rear and side extension – Permitted 04.02.2013.
- 1.3 18/0970/FUL – Construction of two bedroom detached dwelling to rear of 4 Scots Hill accessed via Windmill Drive – Refused 09.07.2018 for the following reasons:

R1 The proposed development by reason of its siting, scale, design, proposed materials, lack of amenity space and limited soft landscaping would be a cramped, visually prominent and intrusive form of development which would fail to preserve the character, appearance and amenities of the locality and wider Conservation Area contrary to Policies CP1 and CP12 of the Core Strategy (adopted October 2011), Policies DM1, DM3 and Appendix 2 of the Development Management Policies LDD (adopted July 2013) and the Croxley Green Conservation Area Appraisal (1996).

R2 The proposed development by reason of its siting, scale, design and siting of windows would be a visually intrusive and prominent form of development which would result in unacceptable levels of both actual and perceived overlooking to the residential occupiers of number 4 Scots Hill. Furthermore, the proposed development by reason of its size, scale and siting would result in inadequate amenity space in terms of quality and quantity and lack of privacy for future residents which would detrimental to the amenities of the future occupiers of the site, contrary to 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).

R3 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).

Appeal allowed (reference 19/0001/REF / APP/P1940/W/19/3219890) subject to conditions.

- 1.4 20/1343/FUL – Variation of Condition 2 (Approved Plans) of planning permission 18/0970/FUL: (Construction of two bedroom detached dwelling to the rear of 4 Scots Hill accessed via Windmill Drive) to allow alterations to layout including re-siting of garage – Permitted 12.05.2021.

2 Description of Application Site

- 2.1 The application site comprises an area of hardstanding measuring approximately 100sqm to the rear of number 4 Scots Hill opposite the turning head at the end of Windmill Drive, Croxley Green. The area of hardstanding is currently used as an informal area for storage of bins serving the commercial and residential units at number 4 Scots Hill as well as an informal parking area. Number 4 Scots Hill is located to the east of the area of hardstanding and comprises a commercial premises at ground floor level with a residential flat at first floor level. Number 4 Scots Hill is a Locally Important Building and has recently benefitted from a part single, part two storey rear extension.
- 2.2 The area of hardstanding is currently separated from number 4 Scots Hill by close boarded fencing with a high level bricked wall to the north and south flanks of the site with the frontage of the site open to Windmill Drive. To the north of the application site is The Sportsman Public House with a further commercial premise, number 6 Scots Hill, adjoining the southern flank of number 4 Scots Hill. Further to the south of the application site is a block of garages and to the west of the application site are residential dwellings and maisonettes of which the rear amenity space is separated from the application site by the service road and a footpath.
- 2.3 The application site is located within the Croxley Green Conservation Area.

3 Description of Proposed Development

- 3.1 This application seeks full planning permission for the construction of a two bedroom detached dwelling to the rear of 4 Scots Hill accessed via Windmill Drive with associated access, parking and landscaping and boundary treatments including timber fence.
- 3.2 The proposed dwelling would have a maximum depth of 9.4m and a width of 6.9m to the front elevation and 7.8m to the rear elevation, reflecting the splayed nature of the southern flank. The proposed dwelling would have a pitched roof form with a maximum height of 7.6m and an eaves height of 5.7m with a flat roof section measuring approximately 0.9m in width and depth. The proposed dwelling would be set back between 1.5m and 2.5m from the highway. The proposed plot would measure approximately 7.5m in width to the frontage and approximately 10m to the rear. The submitted block plan indicates that the proposed dwelling would be set in approximately 1.1m from the southern flank boundary immediately adjacent to Windmill Drive, increasing to 1.7m to the rear reflecting the tapered nature of the southern flank site boundary. The submitted plans indicate that the dwelling would be built up to the northern flank boundary of the application site. The proposed rear garden would have a width of 10m and depth of 4.8m.
- 3.3 The proposed dwelling would comprise an open plan kitchen, dining and living room with a WC to the ground floor with a bathroom, two bedrooms, one with an ensuite and a store at first floor level.
- 3.4 The submitted plans indicate that the roof of the proposed dwelling would be finished with a zinc bronze colour roof, soldier course of brick, brick header detail, bronze colour painted window frames and an oak garage and front door.
- 3.5 The proposed dwelling as part of the current application is of the same appearance as that approved under application reference 20/1343/FUL. The sole difference between the previously approved application and the current application is that the current application is accompanied by a Financial Viability Appraisal which demonstrates that the development

could not viably pay the entire commuted sum toward off-site affordable housing provision. This is further discussed within the analysis section below. The applicant has submitted the current application as the previous permission has elapsed.

4 Consultation

4.1 Statutory Consultation

4.1.1 Croxley Green Parish Council: [Objection]

Croxley Green Parish Council has the following concerns

Overdevelopment of the site

Lack of amenity space and parking

Croxley Green Parish Council support the concerns of the neighbours and request that the application is called into the TRDC planning committee if the officer is minded to approve.

Officer Note: Following receipt of these comments, Officers provided the Parish Council with further information including the appeal decision subject to the 2018 planning application, and the subsequent variation of conditions application in addition to the Conservation Officer's comments on the current application. The Parish Council confirmed that their concerns were still relevant and that the application should be called in unless Officers were minded to refuse.

4.1.2 Conservation Officer: [No Objection]

The proposal is largely similar to the scheme allowed at appeal (ref: APP/P1940/W/19/3219890) and application 20/1343/FUL. There are some minor alterations, but they would not result in any additional harm to the Conservation Area. As noted previously, the proposed alterations to the layout of this property will not alter how this property impacts the Croxley Green Conservation Area.

4.1.3 Hertfordshire County Council – Highway Authority: [No Objection, subject to conditions]

Notice is given under article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission subject to the following conditions:

- 1. No development shall commence until full details (in the form of scaled plans and/or written specifications) have been submitted and approved in writing by the Local Planning Authority to illustrate the following:*
 - Provision of an automatic roller shutter garage door (or alternatively an open covered parking space) or similar to ensure that any garage door does not overhang the highway and any vehicle does not obstruct/wait on the highway whilst manually opening or shutting the door.*
 - Details of replacement parking arrangements for the vehicles currently using the parking area/hardstanding to the rear of 4 Scots Hill.*

Reason: To enable vehicles to safely draw off the highway and that any displaced parking associated with grant of consent does not detriment other users of the highway and in accordance with Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).

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) *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) *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 right of way network. If this development is likely to result in the public highway or public right of way 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) *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 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 123 4047.*

AN) *New or amended vehicle crossover access (section 184): Where works are required within the public highway to facilitate a new or amended vehicle 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/change-to-your-road/dropped-kerbs/dropped-kerbs.aspx> or by telephoning 0300 1234047.*

Comments

It is understood that the description of the development has been amended, however, the plans previously commented upon within the Highways Authorities previous response to this application (my comments dated 09/12/2022) remain unchanged. I therefore repeat them, and recommend condition, herewith.

The application is described as seeking to renew an extant consent (18/0970/FUL and 20/1343/FUL). It is understood the house was granted, at appeal to decision made in respect of 18/0970/FUL, in 2019. The 2020 application understood to be only related to orientation of the approved dwelling.

I can confirm that Hertfordshire County Council, as Highway Authority, were consulted in respect of the 2018 application, our response dated 31/5/2018 refers. Since the time of this

earlier response the Highway Authority has adopted a new Local Transport Plan, the following response therefore has regard to revised Highway Authority Policies.

The Highway Authority are satisfied that the details of the present applicant reflect those previously found acceptable under permission 20/1343/FUL (now Drwg 3435 STR1, formerly drwg P113 Rev P4).

The Highway Authority has previously presented concerns in respect of the garage door, the parking arrangements, and the dropped kerb highlighted. Specifically noting that any garage provided would need to have an automatic roller shutter garage door (or alternatively no door at all and be an open fronted covered parking space).

The proposed dwelling would be accessed via Windmill Drive, which is designated as an unclassified local access road, subject to a speed limit of 30mph and is highway maintainable at public expense. The proposals include utilising an existing vehicle crossover (VXO) / dropped kerb opposite the turning head at the end of Windmill Drive. The existing VXO has provides access to a large hardstanding / parking area for approximately 2/3 vehicles.

The proposals include providing a new VXO to provide access to a single garage with no driveway fronting it.

HCC as Highway Authority has considered that the general proposed access arrangements are acceptable and would not have an unreasonable impact on the safety of highway users passing the site as vehicles would enter straight into the garage and are at the end of the cul-de-sac with low levels of passing traffic. Furthermore, the existing turning head allows for greater manoeuvrability for vehicles at the end of the cul-de-sac. Such decision recognises that visibility from the access is limited, but the nature of Windmill Drive at this location reduced any associated risk to an acceptably low level. It remains however necessary that any garage provided would need to have an automatic roller shutter garage door (or alternatively no door at all and be an open fronted covered parking space) as the garage is less the recommended 6m set back from the edge of the highway carriageway. The applicant is requested to note that they shall also be required to enter into a VXO agreement with HCC as the Highway Authority in relation to the alterations required to the existing dropped kerb.

The only parking provided for the proposed dwelling is the single garage and the existing parking area / hardstanding will be lost. This level of parking would not be a significant issue on its own to recommend refusal from a highways point of view. However, the loss of the existing parking to the rear of 4 Scots Hill shall need to be taken into consideration and the detrimental impact additional potential parking on the highway may have (please see the details as requested in condition 1).

Drawing 3435 STR1 (1:100) whilst featuring a scale bar, shows no measurements to this scale bar. By reference to original submitted drawings the LPA are directed to assure themselves that garage is to an acceptable dimension. Garages beneath 2.4m x 4.8m will be insufficient to accommodate a parked modern vehicle. The Highway Authority, by reference to Manual for Streets, would recommend garage dimensions (internal) of 3m x 6m in order to fully accommodate parked vehicles and associated common residential demands for integral garages. The LPA shall need to consider whether they are satisfied that the garage parking is suitable for consideration as providing parking compliant with local parking standards.

I recognise earlier recommendations provided by the HA have included condition in respect of Construction Management Plan. It is recognised that the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018 imposed greater restrictions on imposition of pre-commencement conditions. I cannot justify, on the scale of development,

such requirement, but request additional advisory notes to ensure that the developer/contractor are aware of the relevant limitations in respect of local impacts of construction.

Whilst drawing 3435 suggests 'automated doors' and what appears to be a track of a (horizontal) roller blind nature garage door, this is not wholly clear.

I repeat the condition in respect of details of gates / doors. The condition previously recommended by Highways included recommendation that details of replacement parking arrangements for vehicles currently using the parking area / hardstanding to the rear of Scots Hill be provided. This would be for the HA to consider the impacts of the displaced parking in respect of safety and capacity, but shall also be necessary to the Local Planning Authority in their responsibility as Parking Authority. Drawing 3435 provides details in respect of the revisions to dropped kerb to Windmill Drive sufficient to remove this element of the previous condition, the requested advisory notes include detail on requirements to arrange the necessary revisions to the vehicle crossover.

4.1.4 National Grid: No response received.

4.2 Public/Neighbour Consultation

4.2.1 Number consulted: 20

4.2.2 No of responses received: 3 (3 objections, 0 supporting)

4.2.3 Site Notice: Expired 18.12.2022 Press Notice: Expired: 23.12.2022.

4.2.4 Summary of objections received:

- There are already 8 vehicles from commercial use using the estate parking
- Occupants of flats above shops use parking
- School drop off use parking
- Losing 2 spaces at the back of the existing shop would mean more parking in residential spaces.
- No visitor parking for new property.
- One parking space is not sufficient.
- Design isn't identical to previous consent. A column has been added to the corner near the front door on the plan but this isn't shown on the elevation. The column reduces the quality of the design.
- Appeal Inspector report highlighted the importance of high quality design but this is now dumbed down: eg. Items mislabelled, oak now labelled only as timber. Design details must be conditioned as appeal inspector recommended.
- Energy statement is dated 2017 showing compliance with 2013 Part L. The Energy Statement should be updated to respond to 2022 Part L and design changes may be necessary to achieve current energy efficiency requirements. TRDC declared a climate emergency since the previous consent and should insist on higher energy efficiency standards than regulatory minimum. Use of fossil fuels should not be permitted, this could be a Passivhaus standard dwelling, all electric.
- Proposed design is not in keeping with character and appearance of area.
- Bulky and prominent.
- Cramped virtually onto the Windmill Drive service road.
- Imposing
- Cramped and visually prominent, intrusive.
- Overlooking concerns.
- If this property sets a precedent for other dwellings along the single-lane service road, there will be a greater parking problem in the future.

4.2.5 Officer comment: All material planning considerations are outlined within the relevant analysis section below.

5 Reason for Delay

5.1 Committee Cycle

6 Relevant Planning Policy, Guidance and Legislation

6.1 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise as set out within S38 (6) Planning and Compulsory Purchase Act 2004 and S70 of Town and Country Planning Act 1990).

6.2 S72 of Planning (Listed Buildings and Conservation Areas) Act 1990 requires LPAs to have special regard to the desirability of preserving or enhancing the character or appearance of conservation areas.

6.3 National Planning Policy Framework and National Planning Practice Guidance

In 2021 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.

6.4 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 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, DM10, DM13, Appendix 2 and Appendix 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.

The Croxley Green Neighbourhood Plan (referendum version, December 2018). Policies CA1 and HO1 are relevant.

6.5 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 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 and would be considered as a windfall site. 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 Policy CP2 of the Core Strategy 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, and*
- iv. Monitoring information relating to housing supply and the Three Rivers housing targets.*

7.1.3 The application site is within Croxley Green 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 previously developed land and 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.

7.1.4 The proposed development would be of previously developed land and given the location of the site within a Key Centre and within a residential area, 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.

7.1.5 The current application would result in the construction of a dwelling which would be identical in appearance to that previously approved under application reference 20/1343/FUL which was submitted following application reference 18/0970/FUL, which was allowed at appeal. No works in relation to the previously approved applications have commenced on site. The current application has been submitted as the time period to implement the previously approved consents has elapsed. The sole material difference between the current application and previous approvals is that the current application is accompanied by a Financial Viability Appraisal which demonstrates that the scheme could not viably pay the full affordable housing contribution. This is outlined in detail at 7.2.1-7.2.5 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 For this application an off-site contribution by way of commuted sum payment would be sought in lieu of the on-site provision of affordable housing.
- 7.2.3 The proposed development would result in a requirement for a commuted sum of £52,875 towards affordable housing based on habitable floor-space of 70.5sqm multiplied by £750 per sqm which is the required amount in the 'Langleys and Croxley Green' market area.
- 7.2.4 The application is accompanied by a Viability Appraisal which outlines that the development would not be able to support a commuted sum towards affordable housing and remain viable. The Council have independently reviewed the submitted details and are of the view that the proposed development could support a commuted sum of £7,535 and remain viable. The applicant has agreed to enter into a S106 Agreement to secure payment of this sum.
- 7.2.5 As such subject to the completion of the S106 Agreement, the proposed development would therefore be acceptable in this respect in accordance with 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 In terms of new residential development, Policy DM1 of the DMP LDD 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.)
- 7.3.3 Policy CA1 of the Croxley Green Neighbourhood Plan outlines that new development should seek to conserve and, wherever possible, enhance the key elements of character and appearance through careful design and massing of new buildings and the protection and enhancement of private gardens and open space without inhibiting innovative design.

- 7.3.4 The planning application 18/0970/FUL was refused by officers for three reasons (harm to character of area, harm to amenities of neighbours and lack of affordable housing contribution) but allowed at appeal (reference APP/P1940/W/19/3219890). Minor amendments were then approved to the scheme under application reference 20/1343/FUL. The current application seeks planning permission for the construction of a dwelling which would have the same appearance as that approved under application reference 20/1343/FUL. Although the NPPF has been updated since the previous applications were determined, and the Croxley Green Neighbourhood Plan has been adopted since the original 2018 permission, there have been no significant policy changes between the determination of the previously approved application and the current application. On the basis that the Development Plan remains unchanged since the 2020 approval, that site circumstances remain the same and on the basis that the dwelling would be of the same appearance as that previously approved in 2020, it is not considered that the proposed development would result in any harm to the character or appearance of the streetscene or wider area when compared with the previously approved schemes.
- 7.3.5 In summary, the proposed new dwelling would not appear unduly prominent or incongruous within the streetscene so as to result in demonstrable harm to the character of the locality. Therefore would be acceptable in accordance with Policies CP1 and CP12 of the Core Strategy, Policy DM1 and Appendix 2 of the Development Management Policies LDD and Policies CA1 and HO1 of the Croxley Green Neighbourhood Plan (referendum version, December 2018)..
- 7.4 Impact on amenity of neighbours
- 7.4.1 Policy CP12 of the Core Strategy states that development should 'protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space'.
- 7.4.2 Policy DM1 and Appendix 2 of the Development Management Policies document set out that 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.
- 7.4.3 Appendix 2 states, in the interests of privacy and to prevent overlooking, 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.
- 7.4.4 Planning permission has previously been given at appeal for application reference 18/0970/FUL for the 'construction of two bedroom detached dwelling to rear of 4 Scots Hill accessed via Windmill Drive'. A subsequent application reference 20/1343/FUL was then granted which allowed alterations to the layout.
- 7.4.5 The proposed development would have the same appearance as the dwelling approved under application reference 20/1343/FUL and which was found to have an acceptable impact on neighbours. The proposal would not result in any additional harm to neighbouring properties.
- 7.4.6 The proposal is therefore considered to be acceptable in this regard in accordance with Policy CP12 of the Core Strategy and Policy DM1 and Appendix 2 of the Development Management Policies document.
- 7.5 Quality of accommodation 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

specific standards for provision of amenity space are set out in Appendix 2 of the Development Management Policies LDD. These standards set out that a two bedroom dwelling should provide 63sqm.

- 7.5.2 The proposed new dwelling would result in a shortfall of approximately 19sqm of amenity space. In allowing the appeal at the application site (reference APP/P1940/W/19/3219890) the Inspector commented that *'in a fairly dense, mixed use environment such as this, a degree of overlooking and disturbance is not uncommon. This space would provide a sufficient area for future occupants of this small two bedroom dwelling to sit outside, hang washing, or to store typical domestic paraphernalia'*. In addition, the application site is located approximately 155 meters, or a 2 minute walk, from the Green, public open space. As such, it is not considered that the shortfall in amenity space provision would result in demonstrable harm to future occupiers, and the proposal is acceptable in this regard.

7.6 Wildlife and Biodiversity

- 7.6.1 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.

- 7.6.2 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 DMP LDD. 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. A Biodiversity Checklist was submitted with the application and states that no protected species or biodiversity interests will be affected as a result of the application.

7.7 Trees and Landscaping

- 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' 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.

- 7.7.2 Policy DM6 of the Development Management Policies LDD sets out that development proposals should seek to retain trees and other landscape and nature conservation features, and that proposals should demonstrate that trees will be safeguarded and managed during and after development in accordance with the relevant British Standards

- 7.8 The development would not result in the loss of any trees within the site. As such it is not considered that the proposed development would result in unacceptable harm in this respect. The current application is accompanied by a hard and soft landscaping scheme which indicates the landscaping to the front and rear of the site. The landscaping scheme is the same as that previously approved under application reference 22/2225/DIS. As such, the landscaping is considered to be acceptable.

7.9 Highways, Access and Parking

- 7.9.1 Core Strategy Policy CP10 requires development to provide a safe and adequate means of access to make adequate provision for all users, including car parking. Appendix 5 of the Development Management Policies document sets out parking standards for developments within the District.

7.9.2 Appendix 5 of the DMP LDD outlines that two bedroom dwellings should provide 2 spaces (1 assigned). The proposed garage would provide one assigned parking space, and as such, there would be an onsite shortfall of one space. The Highways Officer has confirmed that the new dropped kerb arrangement is considered to be acceptable. Notwithstanding this, the Highways Officer has requested a condition to be attached to any granted consent to require details to be submitted to and approved by the LPA to include details of an automatic roller shutter garage door or open covered space and details of replacement parking arrangements for the vehicles currently using the parking area to the rear of 4 Scots Hill. Furthermore, a condition would be attached to any granted consent to require the works to be carried out in accordance with the submitted Construction Management Plan prepared by Bespoke Safety Solutions (BSS) dated 8th December 2020, as approved as part of application reference 21/2224/DIS.

7.9.3 It is acknowledged that given the proposed onsite parking provision that the development would result in an onsite shortage of one parking space. However, given the location of the application site and that there are public transport links within close proximity to the application site, it is not considered that the proposed development would result in significant harm to highway safety, and therefore the proposed development would not result in demonstrable harm as to justify the refusal of planning permission in this regard.

7.10 Sustainability

7.10.1 Paragraph 152 of the NPPF states that “Planning should support the transition to a low carbon future in a changing climate. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure”

7.10.2 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.

7.10.3 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.

7.10.4 An energy statement prepared by Merlin Property Services has been submitted which outlines the new dwelling would result in a 6.04% saving which would comply with the 5% over the requirements of Part L. As such the proposed dwelling would comply with Policy DM4 of the DMP LDD.

7.11 Flood Risk and Drainage

7.11.1 The application site is located within Flood Risk Zone 1. Plentiful provision of soft landscaping would be retained surrounding the new dwelling. The proposed driveway would be permeable so as to prevent surface run off to the highway. Therefore the proposal is considered to be acceptable in this regard.

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 proposed new dwelling would provide access from a driveway directly to the highway to allow for the collection of bins in a manner typical of a residential setting. The block plan indicates a bin store to the rear, indicating it would comprise 1.8 high close boarded timber fence panels. As such, the submitted details are considered to be acceptable.

8 Recommendation

8.1 That the decision be delegated to the Head of Regulatory Services and that PLANNING PERMISSION BE GRANTED, subject to the following conditions and subject to the completion of a Section 106 Agreement:

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 carried out in accordance with the following approved plans: 3435 101 B, 3435 LND 1C, 3435 100 B and 3435 STR1.

Reason: For the avoidance of doubt and in the proper interests of planning, to safeguard the Conservation Area and in the interests of the visual amenities of the locality and the residential amenity of neighbouring occupiers, in accordance with Policies CP1, CP2, CP3, CP4, CP8, CP9, CP10 and CP12 of the Core Strategy (adopted October 2011), Policies DM1, DM3, DM4, DM6, DM8, DM10, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013) and Policies CA1 and HO1 of the Croxley Green Neighbourhood Plan (referendum version, December 2018).

C3 Before any building operations above ground level hereby permitted are commenced, full details (in the form of scaled plans and/or written specifications) shall be submitted and approved in writing by the Local Planning Authority to illustrate the following:

- Provision of an automatic roller shutter garage door (or alternatively an open covered parking space) or similar to ensure that any garage door does not overhang the highway and any vehicle does not obstruct/wait on the highway whilst manually opening or shutting the door.
- Details of replacement parking arrangements for the vehicles currently using the parking area /hardstanding to the rear of 4 Scots Hill.

The development shall thereafter be carried out in accordance with the approved details.

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 DM10 of the Development Management Policies LDD (adopted July 2013).

- C4 The development shall be carried out in accordance with the submitted and approved Construction Management Plan prepared by Bespoke Safety Solutions, dated 8th December 2020.

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 DM10 of the Development Management Policies LDD (adopted July 2013).

- C5 The building shall not be erected other than in the materials as have been approved in writing by the Local Planning Authority as shown on the submitted plans or stated in the submitted material schedule, and no external materials shall be used other than those approved.

Reason: To ensure that the external appearance of the building is satisfactory 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).

- C6 The development hereby approved shall be carried out in accordance with the submitted Landscaping Plan drawing number 3435 LND 1C.

All hard landscaping works required by the approved scheme shall be carried out and completed prior to the first occupation of the development hereby permitted.

All soft landscaping works required by the approved scheme shall be carried out before the end of the first planting and seeding season following first occupation of any part of the buildings or completion of the development, whichever is sooner.

If any existing tree shown to be retained, or the proposed soft landscaping, are removed, die, become severely damaged or diseased within five years of the completion of development they shall be replaced with trees or shrubs of appropriate size and species in the next planting season (ie November to March inclusive).

Reason: This condition is required to ensure the completed scheme has a satisfactory visual impact on the character and appearance of the area in the interests of the visual amenity of the area in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

- C7 Notwithstanding the provisions of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other revoking and re-enacting that Order with or without modification), the garage serving the dwelling hereby permitted shall be retained primarily for the garaging of private cars. No alterations shall be carried out to the garage such as to prevent its use for garaging private cars.

Reason: In the interests of the visual amenities of the area and to ensure that on-site car parking provision is maintained to avoid the standing of vehicles on the adjoining highway to the detriment of safety the free flow of traffic thereon and to meet the requirements of Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM13 and Appendix 5 of the Development Management Policies LDD (adopted July 2013).

- C8 Immediately following the implementation of this permission, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order

2015 (or any other revoking and re-enacting that order with or without modification) no development within the following Classes of Schedule 2 of the Order shall take place.

Part 1

Class A - enlargement, improvement or other alteration to the dwelling

Class B - enlargement consisting of an addition to the roof

Class C - alteration to the roof

Class D - erection of a porch

Class E - provision of any building or enclosure

Part 2

Class A - erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure

No development of any of the above classes shall be constructed or placed on any part of the land subject of this permission.

Reason: To ensure adequate planning control over further development having regard to the limitations of the site and neighbouring properties and in the interests of the visual amenities of the site and the area in general, 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).

- C9 The development shall not be occupied until the energy saving and renewable energy measures detailed within the Energy Statement submitted as part of the application are incorporated into the approved development.

Reason: To ensure that the development meets the requirements of Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM4 and Appendix 2 of the Development Management Policies LDD (adopted July 2013) and to ensure that the development makes as full a contribution to sustainable development as possible.

8.2 **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. It is a requirement under Regulation 67 of The Community Infrastructure Levy

Regulations 2010 (As Amended) that a Commencement Notice (Form 6) is submitted to Three Rivers District Council as the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. DO NOT start your development until the Council has acknowledged receipt of the Commencement Notice. Failure to do so will mean you will lose the right to payment by instalments (where applicable), lose any exemptions already granted, and a surcharge will be imposed.

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 development maintains/improves the economic, social and environmental conditions of the District.
- 14 The applicant is reminded that this planning permission is subject to either a unilateral undertaking or an agreement made under the provisions of Section 106 of the Town and Country Planning Act 1990

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:
 - 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.

¹ The revised National Planning Policy Framework was updated in February 2019 and July 2021 and retains the policies as stated in Paragraph 1.3 of this document.

- 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 and as of 31 December 2021, Three Rivers has received small site affordable housing contributions amounting to over **£2.4 million**. Utilising those monies, development is has funded the delivery of 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 £2.4 million already received, small scale (1-9 unit) schemes have secured to date a further **£2.7million to £4.0million²** 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 2021, 250 planning

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. Data is as of February 2022

permissions were granted for minor residential developments which contribute a net dwelling gain. Of those only 13 have been permitted to lapse which is only 5.2% of all such schemes³.

- 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 2021, 215 planning applications for residential development involving a net gain of dwellings were determined⁴ by the Council. Of these, 191 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

³ The Needs Analyses (December 2019 and December 2020) referred to a lapse rate of 9% for minor developments; manual analysis has since demonstrated that a number of sites included in the 9% lapse figure have been subject to subsequent planning applications which were granted approval. Such sites have therefore still come forward for development despite earlier permissions lapsing. The lapse percentage in this Needs Analysis (January 2022) has therefore been revised to exclude application sites which are subject to later approvals which are either outstanding, under construction or complete.

⁴ Includes refused and approved applications. Excludes prior approval developments.

- Consider whether the Framework should outweigh the weight to be given to the local evidence of affordable housing need and the breach of the adopted development plan policy.

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

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

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

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

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

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

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

- **General House Price Affordability in Three Rivers**
- **Affordable Housing Supply Requirements in Three Rivers**
- **Affordable Housing Provision in Three Rivers**
- **Extent of residential development schemes proposed which are for sites delivering net gain of less than 10 dwellings**

- The contribution towards the provision of affordable housing Policy CP4(e) has historically made in respect of small sites
- Relevant Appeal Decisions
- The fact that the adopted development plan policy does not impose burdens where they would render schemes unviable.

General House Price Affordability in Three Rivers

2.5 Due to the District's close proximity to London, Three Rivers has traditionally been situated within a high house price area. According to data published by the Office of National Statistics (ONS) in the third quarter of 2016⁵, the lowest quartile house price in Three Rivers in 2016, representing the cheapest properties in the District was £325,000.00, making it the **fifth**⁶ most expensive local authority area in England and Wales (excluding London), out of a total of three hundred and three local authority areas (see table 1 below).

Number	Local Authority Name	Lowest Quartile House Prices (2016)
1	Elmbridge	£375,000.00
2	St Albans	£355,000.00
3	Windsor and Maidenhead	£340,000.00
4	Hertsmere	£330,000.00
5	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 2020 was £365,000⁷. The lowest quartile house price of £365,000 places Three Rivers as the **fourth** most expensive local authority area in England and Wales (excluding London), out of a total of three hundred and three local authority areas (see table 2 below). The lowest quartile house price has risen by £40,000 from 2016 to 2020, demonstrating a worsening affordability position.

Number	Local Authority Name	Lowest Quartile House Prices (2020)
1	Elmbridge	£411,250
2	St Albans	£400,000
3	Windsor and Maidenhead	£375,000
4	Three Rivers	£365,000

Table 2.

⁵ ONS (2021) *Dataset: House price to residence-based earnings ratio Table 6a*

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

⁶ Note that prior to the formation of the Buckinghamshire Council (now a unitary authority), Three Rivers was the seventh most expensive local authority area as two local authorities in Buckinghamshire ranked higher in lower quartile house price than Three Rivers in 2016 (South Bucks - £370,000.00; Chiltern - £335,000.00).

⁷ Office for National Statistics (2021) *Dataset: House price to residence-based earnings ratio Table 6a*

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

Lowest quartile earnings in Three Rivers in 2016 were £24,518.00 and £26,983.00 in 2020, 13.3 times worsening to 13.5 below the lowest quartile house prices (ratio of lower quartile house prices to lower quartile gross annual, residence based earnings⁸). In a mortgage market where lenders are traditionally willing to lend 3.5 times a person's income, clearly a lending requirement at over 13 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 2020 to have a deposit of £270,560.00, or (without such a deposit) to earn £94,440.00 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 ratio⁹ 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 fourth¹⁰ worst affordability ratio in England and Wales (excluding London), as set out in table 3 below, again when compared against three hundred and three local authorities.

Number	Local Authority Name	Median quartile house price affordability ratio ⁸ (2016)
1	Hertsmere	14.23
2	Mole Valley	14.18
3	Elmbridge	13.86
4	Three Rivers	13.77

Table 3.

Over the period 2016 to 2020, the median quartile house affordability ratio in Three Rivers has improved with a decrease from 13.77 in 2016 to 12.92 in 2020 (see table 4 below). Whilst the median affordability ratio has slightly improved (by 0.85), Three Rivers has maintained its position with the fourth worst affordability ratio in England and Wales (excluding London), demonstrating a lack of improvement in Three Rivers' affordability position nationally.

Number	Local Authority Name	Median quartile house price affordability ratio ¹ (2020)
1	Mole Valley	16.84
2	Elmbridge	14.17
3	Epsom and Ewell	13.26
4	Three Rivers	12.92

Table 4.

⁸ Office for National Statistics (2020) *Dataset: House price to residence-based earnings ratio Table 6b*
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

⁹ Affordability ratio statistics are revised annually by the ONS to reflect revisions to the house price statistics and earnings data.

¹⁰ Note that prior to the formation of the Buckinghamshire Council (now a unitary authority), Three Rivers had the fifth worst affordability ratio most expensive local authority area as a local authority in Buckinghamshire ranked higher in median affordability ratio than Three Rivers in 2016 (Chiltern – 14.49).

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 2020 that had risen to 13.53, showing a worsening ratio over the period from 2016 to 2020.

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 Local Housing Needs Assessment (LNHA) (August 2020) is the most recent update to the South West Hertfordshire Strategic Housing Market Assessment January 2016 (SHMA) and estimates the need for affordable housing over the 2020-2036 period. The LNHA splits its analysis between affordable housing to rent and affordable housing to buy.

Affordable Housing Need - To Rent

- 2.7 The South West Hertfordshire Local Housing Needs Assessment (LHNA) (August 2020) found that at that time there were approximately 1,276 households within Three Rivers that were situated in unsuitable housing. Unsuitability is based on the numbers of homeless households and in temporary accommodation, households in overcrowded housing, concealed households and existing affordable housing tenants in need. 57% of these households are estimated to be unable to afford market housing without subsidy, which means the revised gross need is reduced to 727 households¹¹.
- 2.8 In addition to needs arising from those in unsuitable housing, the LNHA also analyses affordable need to rent arising from newly-forming households within the District. The LNHA estimates 800 new households forming per annum in Three Rivers over the period 2020 to 2036. 45% of these newly-forming households are estimated to be unable to afford market housing (to rent) resulting in 360 new households with a need for affordable housing to rent each year over the period 2020 to 2036¹².
- 2.9 The LNHA also considers newly arising need for affordable rent from existing households (i.e. households residing in market accommodation now requiring affordable housing). The LNHA estimates an additional 77 existing households falling into need for affordable rent per year over the period 2020 to 2036¹³.
- 2.10 Taking into account the figures of need noted above and the supply of affordable housing to rent through re-lets, the LNHA calculates the annual affordable housing

¹¹ Table 33: Estimated Current Rented Affordable Housing Need, South West Hertfordshire Local Housing Needs Assessment (August 2020)

¹² Table 34: Estimated Level of Rented Affordable Housing Need from Newly Forming Households (per annum 2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

¹³ Table 35: Estimated level of Housing Need from Existing Households (per annum 2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

need to rent over the period 2020 to 2036 as 350 in Three Rivers¹⁴. This need involves households who cannot afford anything in the market without subsidy and is equivalent to 55% of the District's total local housing need requirement calculated by the standard methodology. This indicates the substantial scale of need for this type of affordable housing.

Affordable Housing Need - To Buy

- 2.11 In addition, the LNHA estimates a need of 162 units for affordable home ownership per annum¹⁵ over the period 2020 to 2036, although this is a need which is formed by households identified as being able to afford to rent privately without subsidy.

Total Affordable Housing Need

- 2.12 Combining the need for affordable housing to rent and affordable housing to buy results in the calculation of 512 affordable units per year, equating to approximately 80% of Three Rivers' total local housing need requirement (as calculated by the standard method).

Affordable Housing Provision in Three Rivers

- 2.13 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.
- 2.14 Since the start of the plan period from 1 April 2001 to 31st March 2021 (the latest date where the most recent completion figures are available), 4,965 gross dwellings were completed. From this, 1,128 were secured as affordable housing, a total of 22.7%. This percentage is significantly below the Core Strategy target of 45% which means there was a shortfall of 1,107 or 22.3% in order to fulfil the 45% affordable housing requirement up to 31 March 2021. This shortfall only exacerbates the already pressing need for small sites to contribute towards the provision of affordable housing.
- 2.15 In the latest monitoring period of 2020/21 (financial year), 26 sites¹⁶ 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 four major developments (15%) and 22 minor developments (86%). 17 of the 26 schemes contributed to affordable housing provision whilst nine of the 26 schemes did not contribute:

¹⁴ Table 37: Estimated Annual Level of Affordable/Social Rented Housing Need (2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

¹⁵ Table 42: Estimated Annual Need for Affordable Home Ownership (2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

¹⁶ Sites with completions in 2020/21

- Four out of the 26 sites provided viability justification, in line with CP4 policy, for the absence of affordable housing provision.
- Four 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 17 schemes which did contribute, nine made contributions via commuted sums towards off-site provision; all nine schemes were minor developments, demonstrating the important role of small sites in collecting financial payments to be spent on affordable housing provision. Of the remaining eight schemes which contributed via on-site provision in 2020/21, three were major developments and five were minor developments, with four of the five minor developments delivered by Registered Providers (17/2077/FUL, 17/2606/FUL – Three Rivers District Council; 17/0883/FUL – Thrive Homes; 14/1168/FUL – Watford Community Housing Trust). This reflects the pattern of on-site delivery from large schemes, with commuted sums from minor developments, unless delivered by Registered Providers.

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

- 2.16 In 2017/2018 (financial year), there were 67 planning applications determined¹⁷ 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%). In 2020/21 (financial year), there were 38 planning applications for net gain residential schemes determined, of which 33 were small site schemes (87%). 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 four financial years.
- 2.17 In terms of numbers of completed dwellings proposed by those small site schemes, between 2011-2021 (financial years) some 384 net dwellings were completed which equates to 38 net dwellings per annum and to 22.2% over the 2011-2021 period. 22.2% 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-

¹⁷ Includes refused and approved applications. Excludes prior approval developments.

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

- 2.18 As set out at paragraphs 1.7 and 1.8 above, the commuted payments (£2.4 million) 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 February 2022) secured a further **£2.7million - £4.0million** (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

- 2.19 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 2021 there were 250 planning permissions granted for minor (net gain) residential developments in the District. Of those only 13 have lapsed (5.2%)¹⁸. This demonstrates that the application of CP4 has not acted as a brake on small scale residential developments.

Relevant Appeal Decisions

¹⁸ See footnote 3.

- 2.20 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.
- 2.21 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.
- 2.22 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.
- 2.23 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.
- 2.24 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.”¹⁹*
- 2.25 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.

¹⁹ Paragraph 7, Planning Inspectorate Letter, March 2017.

2.26 The Council's stance has been tested on appeal on numerous occasions (26 decisions as at the date of this document) and the Planning Inspectorate have repeatedly concluded (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 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/19/3229038: 124 Greenfield Avenue**

Decision Date 10th December 2019

“Furthermore, windfall sites make up the majority of the proposals in a District which is constrained by the Green Belt and so delivery of affordable housing from these sites is crucial. The submitted evidence supports the proportion of housing proposals which have been on small sites in the last few years. There is no evidence before me that seeking affordable housing on small sites has precluded small windfall sites coming forward – indeed such sites have contributed a significant amount to the affordable housing pot since 2011... Overall, there is substantial evidence of considerable affordable housing need in the District and it has been demonstrated that small sites make an important contribution to affordable housing delivery in the Borough. I attach very significant weight to this consideration. Whilst the Framework is a material consideration of very considerable weight, based on the local circumstances of this case, in this instance the Framework does not outweigh the relevant development plan policy.”

- **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”

- **APP/P1940/W/20/3259397 24 Wyatts Road**

Decision Date 8th February 2021

“...I consider that the specific circumstances within this district together with the updated evidence to support Policy CP4 are sufficient, in this case, to outweigh the guidance of the Framework.”

- **APP/P1940/W/20/3260602: 8-10 Claremont Crescent, Croxley Green**

Decision Date 18th February 2021

“The Council’s case is that Policy CP4 should continue to apply to all housing developments, notwithstanding its lack of consistency with the more recent Framework. In justifying this position, it has provided robust evidence of a high affordable housing need in the district as well as an independent viability assessment in relation to this appeal. Furthermore, a number of similar appeal decisions, cited by the Council, show that Inspectors have considered development plan policies with lower affordable housing thresholds to outweigh national policy given the local evidence of substantial affordable housing need. Whilst the Framework is a material consideration of very considerable weight, based on the local circumstances of this case, in this instance it does not outweigh the relevant development plan policy. In making this judgement, I have given considerable but not full weight to Policy CP4.”

- **APP/P1940/W/20/3244533 2 Canterbury Way**

Decision Date 4th March 2021

“Over the plan period there have been times when the Council have applied Policy CP4 of the CS and times when they have not. I accept that this may have implications for the delivery of non-major sites, perhaps encouraging whether or not developers will bring forward proposals. However, it cannot be the only factor which influences whether or not such sites are brought forward. Furthermore, there is no substantive evidence to suggest that if Policy CP4 of the CS was not applied it would significantly increase the supply of housing in the district. Moreover, Policy CP4 of the CS was subject to an assessment of viability alongside all other requirements through the Local Plan process... Overall, on the basis of the evidence before me I am not convinced that the Council’s application of Policy CP4 of the CS is directly discouraging developers from bringing forward small sites due to the

need to provide or contribute towards affordable housing or demonstrate that it viably cannot... housing affordability in the district is acute such that, based on the specific circumstances of this case and the evidence presented, I find on balance the proposal should make appropriate provision for affordable housing.”

- **APP/P1940/W/20/3260554: Land adjacent to 2 Coles Farm**

Decision Date 15th June 2021

“The appellant’s comments regarding the importance of small sites is noted as is the Council’s lack of a five-year housing land supply. Despite this, the proposal is required to secure a contribution towards the provision of affordable housing, however, at the point of determination no executable undertaking is before me... The proposal would be contrary to CS Policy CP4 and the Affordable Housing Supplementary Planning Document 2011 which require all new development resulting in a net gain of one or more dwellings to contribute to the provision of affordable housing.”

Conclusion

- 2.27 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, December 2020 and February 2022 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 2020 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 2020/2021 (December 2021)
<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 Local Housing Needs Assessment (August 2020)
<https://www.threerivers.gov.uk/egcl-page/new-local-plan-evidence-base>
5. Office of National Statistics Housing Data 2002-20
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

February 2022