

## PLANNING COMMITTEE – 14 SEPTEMBER 2023

### PART I - DELEGATED

6. **23/0600/FUL - Construction of 2no. two storey semi-detached dwellings with lower ground floor level with associated access, parking and landscaping works; alterations to land levels and boundary treatments including timber fence; provision of bin store, heat pumps and solar panels at Land Adjoining 10 Gypsy Lane, Hunton Bridge, Kings Langley, WD4 8PR**

Parish: Abbots Langley Parish Council  
Expiry of Statutory Period: 04.09.2023

Ward: Gade Valley  
Case Officer: Scott Volker

**Recommendation: That Planning Permission be refused.**

Reason for consideration by the Committee: Called-in by three Members of the Planning Committee because it was considered to be a form of backland development.

To view all documents forming part of this application please go to the following website:  
<https://www3.threerivers.gov.uk/online-applications/search.do?action=simple&searchType=Application>

#### 1 Relevant Planning History

- 1.1 17/0695/FUL – Construction of two detached two storey dwellings on land to the rear of No.10 Gypsy Lane with associated parking and landscaping and alterations to existing access – Refused June 2016 for the following reason:

*R1: The proposed development by reason of its design, density, layout and resulting plot sizes would result in an out of character form of overdevelopment to the detriment of the character of the surrounding area, and there would be overlooking to the proposed dwellings from 10 Gypsy Lane which would be detrimental to the residential amenity of future occupiers. The development would therefore be contrary to Policies CP1, CP3 and CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).*

- 1.2 An appeal was lodged and subsequently dismissed, referenced APP/P1940/C/17/3181246.

#### 2 Description of Application Site

- 2.1 The application site is located on the west side of Gypsy Lane, Hunton Bridge. Gypsy Lane is a residential street comprising of detached properties on large spacious plots along the western side on the road with opens fields located to the east.
- 2.2 The application site once formed part of the residential curtilage of 10 Gypsy Lane which contains a detached two-storey dwelling, but the land was subdivided in 2018 and a two-metre-high close boarded timber fence encloses 10 Gypsy Lane with the application site, wrapping around the south and west of this plot.
- 2.3 The parcel of land measures approximately 950sqm and is free of any built form. The topography of the site slopes downwards in an east to west direction, resulting in the access point from Gypsy Lane being set at a higher land level than the rear of the site. The boundaries of the site are enclosed by fencing and vegetation. The site is narrowest at the front measuring 15m but widens to a width of 25m at the mid-point before increasing again to 32m along the rear boundary including curved boundaries. The plot depth is approximately 55m.

- 2.4 The properties along Gypsy Lane to the north have a relatively uniform front building line. To the south of the site is 12 Gypsy Lane which is sited more than 20m from the highway. To the rear of the application site is 18a Hunton Bridge Hill which is a two-storey detached dwelling which formed part of a development site granted under 17/0197/FUL.

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

- 3.1 Planning permission is sought for the construction of two, two-storey semi-detached dwellings incorporating a lower ground floor level with associated access, parking and landscaping works. Additional works include alterations to land levels and boundary treatments including timber fencing, provision of bin store, heat pumps and solar panels.
- 3.2 The two, three-bedroom properties would be contained within a two-storey detached building, set back approximately 6m from Gypsy Lane at its closest point, increasing to 8.5m as a result of the splayed front boundary. The main two-storey element of the building would have a depth of approximately 9.7m. A two-storey rear projection set down from the main building would extend the footprint by a further 8m. A single storey flat roof projection measuring 5m provides additional depth to footprint of 'House 2' and would have a splayed footprint. At the front the building would have a width of 9.5m. The building has been designed to appear as a single detached dwelling when viewed from the street, with only a single door within the principal elevation.
- 3.3 The main building would have a hipped roof form with a ridge height of 8.6m at its highest point from the land level at the front of the property. The eaves of the building would be 5.5m. At the rear the set down two-storey rear projection would have a height of 6.5m from the lower ground level; sloping down to an eaves level of 4.6m. It would have a crown roof form which would be set below the cills of the first-floor windows of the main storey building. Two dormers are proposed within the roofslopes of the rear and splayed elevations and rooflights are proposed with the flat roof section. The single storey flat roofed projection of 'House 2' would have a height of 3.3m. A single rooflight is proposed.
- 3.4 The submitted information details that the proposed built form would be finished in white render; with Marley Riven Edgemere Interlocking Roof Slate tiles with Anthracite graphite grey coloured aluminium framed windows.
- 3.5 The building would be set off the southern boundary by a maximum of 0.9 metres at the front, however this distance decreases towards the rear because of the splayed boundary line. The building would be set off the boundary with 10 Gypsy Lane by 1.2-1.3 metres and a side access serving 'House 2' would separate the two properties.
- 3.6 Each of the two units would benefit from a private amenity space measuring 350-400sqm in size both comprising of large patio areas abutting the dwellings leading out onto soft landscaped area enclosed by 1.8m high feather board fencing.
- 3.7 Two off-street parking spaces would be provided within the application frontage. One space for each unit. Electric vehicle charger points are also proposed. Bike storage is also proposed – two spaces would be provided internally for 'House 1' and a bike enclosure for two bikes would be provided at the rear of 'House 2'.
- 3.8 A timber refuse and recycling store with capacity for four bins would be provided within the frontage.

### **4 Consultation**

#### **4.1 Statutory Consultation**

- 4.1.1 Abbots Langley Parish Council: Objection

*Members feel this proposal represents contrived overdevelopment of the site. Members have concerns regarding the overlooking nature of the proposed development on the garden area and house at 10 Gypsy Lane as well as the proximity to that boundary which would have an overbearing effect on any future residents. Members also support Herts Highways objections regarding access and visibility.*

#### 4.1.2 Hertfordshire County Council – Highway Authority: Objection

*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 recommends that permission be refused for the following reason:*

*The proposed access arrangement is not in accordance with Hertfordshire County Council specifications as documented in Roads in Hertfordshire; Highway Design Guide and has the potential to interfere with the free and safe flow of highway users on the adjacent highway due to the inappropriate level of visibility. The proposals are therefore contrary to policy guidelines as outlined in the National Planning Policy Framework (NPPF) and Hertfordshire Local Transport Plan (LTP4).*

#### **Comments/Analysis**

##### *Site and Surroundings:*

*Gypsy Lane is an unclassified local access route subject to a 30mph speed limit which is highway maintainable at public expense. There is not a footway fronting the site, nor along the entirety of Gypsy Lane. The site is located within Hunton Bridge to the southwest of Abbots Langley, just north of Watford.*

##### *Highway Impact:*

*Due to the classification and speed of Gypsy Lane, the visibility splay from the access must be 2.4m x 43m. Drawing number GYPH-A1-10B shows the visibility splays are only setback by 2m which as outlined in Manual for Streets is acceptable for “some very lightly-trafficked and slow-speed situations”, this would therefore not be suitable at the site as neither a traffic count nor speed survey have been completed to prove this is a low traffic area. The visibility splays have also been drawn to outside kerb to the north, whereas visibility splays should be drawn to the inside kerb to ensure that full visibility of the carriageway is available. Furthermore, the northern visibility splay has been shown to run through third party land as well as being blocked by the proposed bin store and the neighbouring fencing, which is above 600mm in height, meaning that the visibility splay would not actually be clear. It is stated that the boundary wall at the site is no more than 600mm tall to allow for visibility but the proposed site sections, drawing number GYPH-A1-3B, indicates that the site boundary wall to the south is above this height, and would therefore interfere with the southern visibility splay. Therefore, there is inadequate visibility to both the north and the south of the access which would mean that the access for two dwellings cannot be considered safe.*

##### *Conclusion:*

*HCC as the Highway Authority have reviewed the supporting documents and drawings and wishes to raise an objection to the application. This is due to severe highway safety concerns as the proposals are contrary to the design standards contained in Roads in Hertfordshire: Highways Design Guide and Manual for Streets; due to the lack of available visibility.*

4.1.3 National Grid: No response received.

#### **4.2 Public/Neighbour Consultation**

4.2.1 Number consulted: 3

4.2.2 No of responses received: 9 objections, 0 letters of support, 1 neutral comment

4.2.3 Site Notice: Posted 24.07.2023 Expired 14.08.2023

4.2.4 Summary of Responses:

#### Character

Plans are vague and distorted; Boundary lines not with adjacent neighbouring plots are not accurately drawn; Plot is not width enough for two dwellings; Out of character and not in keeping with existing properties on Gypsy Lane; Overdevelopment of the plot; Area is made up of individually designed houses; Street scene would be detrimentally impacted; Inappropriate development of garden land; Undesirable development.

#### Neighbouring Amenity

Overlooking to neighbouring amenity; Loss of light; Location of bin storage area adjacent to neighbouring boundary unneighbourly; Private gardens of new dwellings would be overlooked by 10 Gypsy Lane; Access to close to 12 Gypsy Lane; Overshadowing of neighbouring property.

#### Highways/Parking

Excess noise and pollution from increase traffic; Impact on highway safety; Lack of parking on site would result in cars parking in nearby Fernhills; Access not suitable; Existing lane not suitable for large vehicles required during construction of development; Gypsy Lane is designated cycle route. Increase in traffic would cause risk to cyclists; No possibility to park on Gypsy Lane so any contractor or visitor parking post development would be on neighbouring streets; Space allocated for on-site parking is insufficient; Unacceptable provision of parking to meet modern day needs; Impact on access for emergency vehicles and railway tunnel at the end of Gypsy Lane.

#### Other

Adverse impact on trees; Damage to the existing chalk dell which is an environmental feature; Impact on biodiversity; Potential for land disruption as a result of excavation works; Increase risk of flooding; Significant ground works required; Use of swift bricks encouraged.

### **5 Reason for Delay**

5.1 None.

### **6 Relevant Planning Policy, Guidance and Legislation**

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).

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.

6.1 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’.

## 6.2 The Three Rivers Local Development Plan

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

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

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

### Other

Affordable Housing Supplementary Planning Document (adopted June 2011).

## **7 Planning Analysis**

### 7.1 Principle of Development

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

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

- i. The location of the proposed development, taking into account the Spatial Strategy
- ii. The sustainability of the development and its contribution to meeting local housing needs

- iii. Infrastructure requirements and the impact on the delivery of allocated housing sites
- iv. Monitoring information relating to housing supply and the Three Rivers housing targets.

- 7.1.3 The application site is within the settlement of Abbots Langley which is identified as a Key Centre in the Core Strategy. The Spatial Strategy of the Core Strategy advises that new development will be directed towards appropriate infilling opportunities within the urban areas of Key Centres. Policy PSP2 advises that Key Centres will provide approximately 60% of the District's housing requirements over the plan period.
- 7.1.4 Paragraph 117 of the NPPF sets out that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land. It should be noted that Annex 2: Glossary of the NPPF defines that 'previously developed land' excludes 'land in built-up areas such as residential gardens'.
- 7.1.5 The proposed dwellings would be on former garden land, which is therefore not considered to be previously developed however it is also recognised that the NPPF does not include a presumption against development on or within private residential gardens, with each application to be assessed on its individual merits. However, it gives the following advice at paragraph 71; "Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area".
- 7.1.6 There is no in principle objection to residential development of the application site in relation to Policy CP2; however, this is subject to consideration against other material considerations as discussed below.

## 7.2 Housing Mix

- 7.2.1 Policy CP3 of the Core Strategy advises that housing proposals take into account the range of housing needs, in terms of size and type of dwellings as identified by the SHMA and subsequent updates. The Local Housing Needs Assessment (LNHA), was finalised in 2020 and is the most recent update to the Strategic Housing Market Assessment SHMA. The recommended mix for market housing, affordable home ownership and social/affordable rented housing identified in the LNHA is shown below. The Local Housing Needs Assessment (LNHA), was finalised in 2020 and is the most recent update to the SHMA and has identified the indicative targets for market sector dwelling sizes within Three Rivers District, which are as follows:

1 bedroom 5% of dwellings  
2 bedrooms 23% of dwellings  
3 bedrooms 43% of dwellings  
4+ bedrooms 30% of dwellings

- 7.2.2 The proposed development would provide 100% 3 bed units. Whilst the proposed mix would not accord with Policy CP3, it is not considered that a development of this form would prejudice the ability of the Council to deliver overall housing targets and the development is therefore considered acceptable in accordance with Policy CP3 of the Core Strategy (adopted October 2011).

## 7.3 Affordable Housing

- 7.3.1 **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.

7.3.2 As there would be a net gain of two units, the proposed development would be liable for a commuted sum payment towards affordable housing. The proposed development would result in a requirement for a commuted sum of £422,625 (indexation not included) towards affordable housing based on a habitable floorspace of 563.5sq. metres multiplied by £750 per sq. metres which is the required amount in 'The Langleys' market area.

7.3.3 However, Policy CP4 acknowledges that applications will be considered on a case-by-case basis to allow individual site circumstances to be reflected which may take account of development viability and the National Planning Policy Framework is clear that requirements should not prejudice development viability.

7.3.4 The applicant has now submitted a Financial Viability Assessment in support of this application which concluded that it would not be possible for the development to contribute to the provision of affordable housing showing a deficit of £161,687. The FVA has been provided to the council's independent viability assessor however at the time of writing the council are not in receipt of the appraisal. Members will be updated verbally at the committee meeting.

#### 7.4 Impact on Character and Street Scene

7.4.1 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'.

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

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

7.4.3 The proposed development would not result in a tandem development. In addition, the development is not regarded as 'backland' development given the siting of the proposed dwellings. The two dwellings would be situated within a large, detached building set back from Gypsy Lane by a minimum distance of 6m. The frontage comprising a forecourt parking area and the land to the rear subdivided to provide two separate private residential gardens. With regards to access and traffic generation, these factors will be assessed in detail in section 7.10 of this report below. The proposed development would be located on a parcel of open land which historically formed part of 10 Gypsy Lane but was subdivided in 2017. The impact on residential amenity is assessed at paragraph 7.5 below.

7.4.4 Turning to the layout of the proposed development, those dwellings located along Gypsy Lane are set within large spacious plots measuring approximately 40-65 metres in depth and 10- 20 metres in width; however, the properties to the west along Hunton Bridge Hill, Hunton Close and Fernhills are set within smaller plots measuring 30-35 metres in depth and 11-15 metres in width. In determining the appeal APP/P1940/C/17/3181246 (LPA Ref: 17/0039/REF) the Inspector commented on the character of the area and stated the following:

*'The Council has referred to Gypsy Lane as being a local sub area different in character to nearby Fernhills or Hunton Close. These areas do not appear to be defined in any Council planning policy or guidance. Nonetheless, criterion v) of DMP Policy DM1 seeks the maintenance of the particular character of the area in the vicinity of the application site. Hunton Close is a small cul-de-sac of dwellings, most of which are positioned behind the established building line of Hunton Bridge Hill, and tend to have quite small plots. In addition, although physically separated from Hunton Close, the alignment of the two dwellings at the rear of No 18 Hunton Bridge Hill with No 2 Hunton Close means that they are more closely related in character with that cul-de-sac than with the appeal proposal.*

*By contrast, there are no other examples of backland development within Gypsy Lane, and most dwellings have generous rear or side gardens. No 12 Gypsy Lane is untypical in being set well back from the road frontage.'*

7.4.5 The application site historically formed 10 Gypsy Lane but as a result of the subdivision in 2017 the resultant application site is irregular in shape. The frontage of the site measures 15m but widens to a width of 25m at the mid-point before increasing again to 32m along the rear boundary including curved boundaries. The plot depth is approximately 55m. The general layout of the proposed development with parking for each unit within the frontage and an associated amenity space at the rear would be consistent with neighbouring plots; however, the irregularity of the plot shape would be exacerbated by its subdivision and the resultant plots would be out of character with the locality where plots are generally rectangular in shape and the development would appear incongruous within the area.

7.4.6 When viewed from Gypsy Lane the development would maintain the appearance of a large, detached dwelling which would be consistent with the general character of the street scene. The building would have with a central entrance for 'House 1' located within the principal elevation of the building and a side entrance within the north elevation providing access to 'House 2'. Notwithstanding this, the Design Criteria at Appendix 2 of the Development Management Policies document sets out that development at first floor level should be set in from flank boundaries by a minimum of 1.2m. Whilst the building would be set off the northern boundary by 1.2m, the development would fail to maintain appropriate spacing to the southern boundary. The stepped south elevation would be adjacent to a splayed boundary line resulting in a gap of 0.9m at its widest point but narrowing such that the building would be built up to the boundary at first floor level contrary to Appendix 2. The failure to provide sufficient spacing, coupled with the oversized design of the building (especially in comparison to the width of the plot) results in the built form appearing disproportionate, cramped and this part of the site appearing overdeveloped. Due to the siting of the development the cramped nature of the proposal would be unduly prominent within the streetscene.

7.4.7 In addition to the above, the design of the building further emphasises the cramped and contrived nature of the development by reason of the inclusion of the large two-storey rear projection measuring 9m in depth containing splayed walls and a crown roof form which relates poorly to the main building and adds bulk and massing to this element of the proposal. The additional single storey rear projection extending the depth of 'House 2' by an additional 5m is excessive and results in the rear projections appearing disproportionate to the main building.



- 7.4.8 In conclusion, the proposed development by reason of the scale, design and proximity to boundaries would result in a cramped, contrived and unduly prominent form of development which would result in harm to the character and appearance of the area. The development would therefore be contrary to Policies CP1, CP3 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- 7.5 Impact on amenity of neighbours
- 7.5.1 Policy CP12 of the Core Strategy states that development proposals should protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space.
- 7.5.2 The Design Criteria at Appendix 2 of the Development Management Policies document states that extensions should not be excessively prominent in relation to adjacent properties and not result in loss of light to the windows of neighbouring properties nor allow overlooking. Two-storey development at the rear of properties should not intrude into a 45 degree splay line across the rear garden from a point on the joint boundary, level with the rear wall of the adjacent property.
- 7.5.3 In relation to privacy, Appendix 2 of the Development Management Policies LDD sets out that the distance 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 on to each other. Distances should be greater in situations where there are site level differences involved. Where privacy is achieved by means such as careful layout, screening, or differing levels, rear gardens may be of varied lengths. However, where rear garden length alone is relied on to provide privacy the minimum length should be 14 metres.
- 7.5.4 Due to the location of the proposed building, spacing and land level differences, it is not considered that the proposed development would result in any significant loss of light or become an overbearing form of development to the residential amenities of 12 Gypsy Lane. A window is proposed at both lower ground level and first floor level of the two-storey rear projection. Subject to a condition restricting the first floor window to be obscure glazed and non-opening below 1.7m it is not considered that any harmful actual or perceived overlooking would arise to the detriment of 12 Gypsy Lane.
- 7.5.5 With regards to 10 Gypsy Lane, the proposed building would be located to the south and would have a front building line that would be set behind that of this neighbour to the north. To the rear, the main building would project beyond the rear elevation of 10 Gypsy Lane by approximately 2.5m and as a result would intrude on a 45 degree splay line taken from a point on the shared boundary level with the rear elevation of 10 Gypsy Lane. As a result of the intrusion and the siting of the development to the south, it is considered that the main two-storey building would cause loss of light and result in an overbearing form of development to the detriment of the amenities of occupiers of 10 Gypsy Lane. In addition, the proposed two-storey rear projection further intrudes the 45 degree splay line by 5.5m. Whilst there is this intrusion, this element of the proposal, along with the single storey rear projection, would be sited on a lower land level and thus this element would have a height of approximately 3m relative to the land levels within the garden of 10 Gypsy Lane (as shown on the Section 1 drawing on plan GYPH-A1-2B). The roof of the two-storey projection would be hipped away from the common boundary also. Although it is not considered that the two-storey rear projection would result in harm to 10 Gypsy Lane in respect of loss of light it is considered that the cumulative depth of the development would appear overbearing and unneighbourly to the detriment of residential amenities of occupiers of 10 Gypsy Lane contrary to Policy CP1 and CP12 of the Core Strategy and Policy DM1 and Appendix 2 of the Development Management Policies LDD.

- 7.5.6 Glazing is proposed within the north elevation facing towards 10 Gypsy Lane. The glazing would be predominantly located at ground floor level which would also be lower than that of 10 Gypsy Lane. As such, it is not considered that any unacceptable overlooking would occur towards the private garden or windows of 10 Gypsy Lane. The first floor window above the side entrance to 'House 2' within the main two storey building would be conditioned to be obscure glazed and non-opening below 1.7m to prevent any direct overlooking.
- 7.5.7 The application site does back onto 18a Hunton Bridge Hill and glazing would be contained within the rear elevation of the development including the rear dormers within the roofspace of the two-storey rear projection. A distance of approximately 30 metres would be maintained between the proposed development and the common boundary shared with this shared to the west which is considered sufficient distance to prevent any unacceptable levels of overlooking and loss of privacy to the residential amenities of 18a Hunton Bridge Hill.
- 7.5.8 In conclusion, the proposed development would result in an overbearing and unneighbourly form of development to the detriment of the residential amenities of occupiers of 10 Gypsy Lane contrary to Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- 7.6 Amenity Space Provision & Quality of Accommodation for future occupants
- 7.6.1 Policy CP12 of the Core Strategy states that development should take into account the need for adequate levels of disposition or 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. The indicative standards state a three-bedroom should have access to 85sq. metres of amenity space.
- 7.6.2 The proposed floor plans show that each of the new dwellings would benefit from reasonable sized rooms and each of the habitable rooms would be served by a windows and some rooms further supplemented by rooflights ensuring that the rooms would benefit from adequate levels of natural light and is acceptable.
- 7.6.3 The submitted block plan indicates that each of the new units would benefit from large private amenity spaces measuring between 350-400sqm in size comprising a patio area abutting the rear elevations of the dwellings which would lead out onto areas of soft landscaping. Thus sufficient amenity space would be provided in accordance with the standards set out in Appendix 2.
- 7.6.4 Despite being acceptable in regards to their size, the private amenity space associated with 'House 2' would be heavily overlooked from 10 Gypsy Lane, given the elevated land levels which this existing property is sited on to the detriment of future occupiers of 'House 2' contrary to Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- 7.7 Wildlife and Biodiversity
- 7.7.1 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.
- 7.7.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of applications in accordance with Policy CP9 of the Core Strategy (adopted October 2011) and Policy DM6 of the DMLDD. National Planning Policy requires Local Authorities to ensure that a protected species survey is undertaken for applications that may be affected prior to determination of a planning application.

7.7.3 The site is not in or located adjacent to a designated wildlife site. The application has been submitted with a Biodiversity Checklist and states that no protected species or biodiversity interests will be affected because of the application. The Local Planning Authority is not aware of any records of protected species within the immediate area that would necessitate further surveying work being undertaken. As such, no further surveys or mitigation is deemed necessary for this site and the development is in accordance with Policy DM6 of the Development Management Policies LDD.

## 7.8 Trees and Landscaping

7.8.1 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.

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

*i) Proposals for new development should be submitted with landscaping proposals which seek to retain trees and other important landscape and nature conservation features. Landscaping proposals should also include new trees and other planting to enhance the landscape of the site and its surroundings as appropriate.*

*ii) Development proposals on sites which contain existing trees and hedgerows will be expected to retain as many trees and hedgerows as possible, particularly those of local amenity or nature conservation value or hedgerows considered to meet the Hedgerow Regulations 1997.*

*iii) Development proposals should demonstrate that existing trees, hedgerows and woodlands will be safeguarded and managed during and after development in accordance with the relevant standards.*

*iv) Development should be designed in such a way as to allow trees and hedgerows to grow to maturity without causing undue problems of visibility, shading or damage. Development likely to result in future requests for significant topping, lopping or felling will be refused.*

*v) Planning permission will be refused for any development resulting in the loss of deterioration to protected woodland (including ancient woodland), protected trees (including aged or veteran trees) and hedgerows.*

7.8.3 The site was previously cleared of several unprotected trees in 2017. Some trees remain along the boundaries of the site including a Western Red Cedar, two Cypress trees along the northern boundary shared with 8 Gypsy Lane to the rear of 10 Gypsy Lane. The application is supported by an Arboricultural Impact Assessment, Method Statement and Tree Survey which details that the proposed building would not directly impact on existing trees however the proposed new boundary fencing is shown to encroach within the root protection areas of trees and as such posts would be manually excavated to mitigate against any damage towards the roots of the trees. Officers consider that a condition should be attached to ensure that development is undertaken in accordance with the submitted details.

## 7.9 Highways & Access

7.9.1 Policy CP10 of the Core Strategy requires development to demonstrate that it will provide a safe and adequate means of access. Core Strategy Policy CP1 states that development should provide opportunities for recycling wherever possible.

7.9.2 The application is supported by a Forecourt Parking Plan (GYPH-A1-10B) which shows the layout of the spaces and that vehicles would be able to enter and exit in forward gear. Whilst vehicles would be able to exit in forward gear the Highway Authority raised an objection due to insufficient visibility splay lines. Due to the classification and speed of Gypsy Lane, the visibility splay from the access must be 2.4m x 43m. Drawing number GYPH-A1-10B shows the visibility splays are only setback by 2m which as outlined in *Roads in Hertfordshire: Highways Design Guide and Manual for Streets* is acceptable for “some very lightly-trafficked and slow-speed situations”, this would therefore not be suitable at the site as neither a traffic count nor speed survey have been completed to prove this is a low traffic area. In addition, the visibility splays have also been drawn to outside the kerb to the north, whereas visibility splays should be drawn to the inside kerb to ensure that full visibility of the carriageway is available. Furthermore, the northern visibility splay has been shown to run through third party land as well as being blocked by the proposed bin store and the neighbouring fencing, which is above 600mm in height, meaning that the visibility splay would not actually be clear. It is stated that the boundary wall at the site is no more than 600mm tall to allow for visibility but the proposed site sections, drawing number GYPH-A1-3B, indicates that the boundary wall to the south is above this height, and would therefore interfere with the southern visibility splay. Therefore, there is inadequate visibility to both the north and the south of the access which would mean that the access for two dwellings cannot be considered safe.

7.9.3 In conclusion the development would fail to provide adequate and safe means of access and would therefore impact on highway safety to the detriment of the safe movement and free flow of highway users. The development is therefore contrary to Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and the NPPF (2021).

## 7.10 Parking

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

3 bedroom dwellings – 2.25 spaces (2 assigned)

7.10.2 Based on the above requirements the development should provide 4.5 car parking spaces (4 assigned).

7.10.3 The submitted site plan details that the two off-street parking spaces would be provided within the site frontage – one space for each dwelling and would also incorporate electric vehicle charging points.

7.10.4 The development would result in a shortfall of 2.5 spaces (2 assigned). Gypsy Lane is a narrow lane where there is no opportunity for on-street parking. As such, there is a greater need for parking to be provided within frontages of properties. The shortfall of parking would lead to vehicles parking in neighbouring streets impacting on the safe flow of traffic within the area. The development is therefore contrary to Policy DM13 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

## 7.11 Sustainability

7.11.1 Paragraph 152 of the NPPF states that “Planning plays a key role in helping 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.”

7.11.2 Policy CP1 of the Core Strategy requires the submission of an Energy and Sustainability Statement demonstrating the extent to which sustainability principles have been

incorporated into the location, design, construction and future use of proposals and the expected carbon emissions.

- 7.11.3 Policy DM4 of the DMLDD requires applicants to demonstrate that development will produce 5% less carbon dioxide emissions than Building Regulations Part L (2013) requirements having regard to feasibility and viability. This may be achieved through a combination of energy efficiency measures, incorporation of on-site low carbon and renewable technologies, connection to a local, decentralised, renewable or low carbon energy supply. The policy states that from 2016, applicants will be required to demonstrate that new residential development will be zero carbon. However, the Government has announced that it is not pursuing zero carbon and the standard remains that development should produce 5% less carbon dioxide emissions than Building Regulations Part L (2013) requirements having regard to feasibility and viability.
- 7.11.4 The application has been accompanied by an Energy Statement prepared by Peter Pendleton Associates Ltd. which sets out that the arrangements would be made for the development to achieve carbon emissions savings well in excess of the 5% required. This would be achieved through the installation of Air Source Heat Pumps located at lower ground level to the rear of each house. The Energy Statement is considered to meet the requirements of Policy DM4 and a condition would be attached to ensure the development is undertaken in accordance with the submitted details.

## 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 development details that an enclosed timber bin storage structure would be located within the site frontage. Bins would then be placed beside the access on collection days which is considered sufficient and acceptable in accordance with Policy DM10 of the Development Management Policies LDD.

## 7.13 'Tilted Balance'

- 7.13.1 The LPA cannot currently demonstrate a 5-year housing land supply, and therefore paragraph 11 of the NPPF (2019) is engaged. Paragraph 11 and footnote 7 clarifies that in the context of decision-taking "the policies which are most important for determining the application are out-of-date when the LPA cannot demonstrate a five year supply of deliverable housing sites". The most important policies for determining a housing application are considered to be Policies CP2 (Housing Supply) and Policy CP3 (Housing Mix and Density). Paragraph 11 continues, "Plans and decisions should apply a presumption in favour of sustainable development...where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: a) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or b) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."
- 7.13.2 The NPPF identifies that there are 3 dimensions to sustainable development: social, economic and environmental.

- 7.13.3 In favour, the development would make a limited contribution towards making up the shortfall in housing in the district (net gain of two), and some increased expenditure and employment during construction and by future occupants. Other limited weight can be afforded to the energy benefits through a reduction in CO2 emissions and provision of electric vehicle charging points.
- 7.13.4 However, as highlighted above the proposed size and scale of the proposed building would result in a cramped and contrived development and would represent overdevelopment of the plot to the detriment of the character of the area; would result in detrimental harm to neighbouring amenity and an adverse visual impact on neighbouring properties. The proposal would also fail to provide acceptable living conditions for the future occupants of 'House 2' due to overlooking of its private amenity space from 10 Gypsy Lane. The scheme would also fail to provide a safe vehicular access or adequate parking provision.
- 7.13.5 Having regard to the limited benefits of the scheme it is considered that the adverse impacts would significantly and demonstrably outweigh the benefits of the development and thus the tilted balance does not come into effect.

## **8 Recommendation**

- 8.1 That the decision be delegated to the Head of Regulatory Services to consider any representations received from the council's Independent Viability Assessor and that:
- 8.2 A) In the event that the Viability Assessor concludes that the scheme is not viable with any affordable housing contribution, that PLANNING PERMISSION BE REFUSED for the following reasons:
- R1 The proposed development by reason of the scale, design and proximity to boundaries would result in a cramped, contrived and unduly prominent form of development which would result in harm to the character and appearance of the area. The development would therefore be contrary to Policies CP1, CP3 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- R2 The proposed development by reason of its height, depth and siting relative to 10 Gypsy Lane would result in an overbearing and unneighbourly form of development to the detriment of the residential amenities of occupiers of 10 Gypsy Lane. The relationship with 10 Gypsy Lane would also cause overlooking from this neighbour towards the private amenity space of 'House 2' impacting on the living conditions of this neighbour. The development is contrary to Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD.
- R3 The development would fail to provide adequate and safe means of access and would therefore impact on highway safety to the detriment of the safe movement and free flow of highway users. The development is therefore contrary to Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and the NPPF (2021).
- R4 The proposed development would fail to provide sufficient parking to serve the proposed development. The resultant shortfall would be likely to result in an increase in parking outside of the application site to the detriment of the safe movement and free flow of other highway users. The development is therefore contrary to Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).

8.3 B) Or, in the event that the Viability Assessor concludes that the scheme can viably contribute to affordable housing, that PLANNING PERMISSION BE REFUSED for the following reasons:

- R1 The proposed development by reason of the scale, design and proximity to boundaries would result in a cramped, contrived and unduly prominent form of development which would result in harm to the character and appearance of the area. The development would therefore be contrary to Policies CP1, CP3 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- R2 The proposed development by reason of its height, depth and siting relative to 10 Gypsy Lane would result in an overbearing and unneighbourly form of development to the detriment of the residential amenities of occupiers of 10 Gypsy Lane. The relationship with 10 Gypsy Lane would also cause overlooking from this neighbour towards the private amenity space of 'House 2' impacting on the living conditions of this neighbour. The development is contrary to Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD.
- R3 The development would fail to provide adequate and safe means of access and would therefore impact on highway safety to the detriment of the safe movement and free flow of highway users. The development is therefore contrary to Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and the NPPF (2021).
- R4 The proposed development would fail to provide sufficient parking to serve the proposed development. The resultant shortfall would be likely to result in an increase in parking outside of the application site to the detriment of the safe movement and free flow of other highway users. The development is therefore contrary to Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).
- R5 In the absence of a Section 106 Agreement to secure a commuted sum payment in lieu of on-site affordable housing provision, the proposed development would not contribute to the provision of affordable housing. It has otherwise not been demonstrated that it would not be viable to contribute. The development therefore fails to meet the requirements of Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011).

8.4 **Informatives:**

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

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

### Background

- 1.1 In November 2014, the Minister of State for Housing and Planning issued a Written Ministerial Statement (WMS) setting out changes to national planning policy. The WMS stated that financial contributions towards affordable housing should no longer be sought on sites of 10 units or less and which have a maximum combined gross floor area of 1,000sqm. National Planning Practice Guidance (NPPG) was amended to reflect this. However on 31<sup>st</sup> July 2015 the High Court held (*West Berkshire Council v SSCLG* [2015]) that the policy expressed through the WMS was unlawful and the NPPG was changed to reflect this. On 11<sup>th</sup> May 2016 the Court of Appeal reversed the High Court decision. The NPPG was subsequently amended to reflect the WMS on 19<sup>th</sup> May 2016.
- 1.2 In light of the above developments, between November 2014 and August 2015 and May 2016 and 1<sup>st</sup> September 2017 the Council gave greater weight to the WMS policy and associated NPPG guidance in it than to adopted Policy CP4 of its Core Strategy in respect of development proposals for 10 dwellings or less and which had a maximum combined gross floor area of 1000 sq metres. However, having undertaken an analysis of up to date evidence of housing needs (**The Needs Analysis**), officers advised in 2017 that when considering the weight to be given to the WMS in the context of breaches of the adopted development plan policy, the local evidence of housing need contained in the Needs Analysis should generally be given greater weight. On 1<sup>st</sup> September 2017 the Council resolved to have regard to the Needs Analysis as a consideration of significant weight when considering the relationship between Policy CP4 and the WMS for the purposes of Section 70(2) Town and Country Planning Act 1990 and Section 38(6) Planning and Compulsory Purchase Act 2004 in respect of development proposals of 10 dwellings or less.
- 1.3 On 24<sup>th</sup> July 2018 a new version of the National Planning Policy Framework<sup>1</sup> (the Framework) was published with immediate effect for development management purposes. Paragraph 64 of the Framework advises that *“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).”* Annex 2 of the NPPF defines *“major development”* as *“for housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.”*
- 1.4 The Council's current affordable housing policy is set out in Policy CP4 of the Core Strategy (adopted in October 2011) and establishes that :
  - a) *“...All new development resulting in a net gain of one or more dwellings will be expected to contribute to the provision of affordable housing.”*
  - e) *“In most cases require affordable housing provision to be made on site, but in relation to small sites delivering between one and nine dwellings, consider the use of commuted payments towards provision off site. Such payments will be broadly equivalent in value to on-site provision but may vary depending on site circumstances and viability.”*
- 1.5 The supporting text to Policy CP4 summarises the justification for it:

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<sup>1</sup> The 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.



- Average house prices in Three Rivers are some of the highest in the country outside of London. As a result, many local people have difficulty accessing housing on the open market.
- A Housing Needs Study estimated that 429 affordable dwellings would be needed each year to satisfy need. Such provision would exceed the total number of all housing types provided in the District in any year.
- The 2010 Strategic Market Housing Assessment (SMHA) found that the requirement for affordable housing in and around the Three Rivers area remains exceptionally high.
- In order to completely satisfy affordable housing requirements, **all** future housing in the district to 2021 would need to be affordable.

1.6 This policy remains the legal starting point for the consideration of planning applications under Section 38(6) PCPA 2004, which requires that the Council determines applications in accordance with the adopted development plan unless material considerations indicate otherwise. Revised NPPF 64 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 & Conservation and Head of Regulatory Services on the weight that they recommend should be given to NPPF 64 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 2022, Three Rivers has received small site affordable housing contributions amounting to over **£2.9 million**. Utilising those monies has funded the delivery of 55 units of additional affordable housing to date. 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 £2.9 million already received, small scale (1-9 unit) schemes have secured to date a further **£760,000.00 to £2million<sup>2</sup>** of affordable housing contributions in respect of unimplemented but current planning permissions. All of those schemes were agreed to be viable with those sums secured. The Council has several large-scale future residential developments planned which will aim to deliver substantial quantities of further affordable housing in the District in the medium term future, utilising those additional affordable housing contributions as and when they are received.

1.9 Policy CP4 makes it clear that a requirement for a scheme to contribute towards the provision of affordable housing is subject to viability considerations and is therefore consistent with paragraph 124 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 2022, 255 planning permissions were granted for minor residential developments which contribute a net dwelling gain. Of those only 18 have been permitted to lapse which is only 7.1% of all such schemes<sup>3</sup>.

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<sup>2</sup> The sums payable secured by Sec 106 will be subject to indexation, in most cases from June 2011 which will not be calculable until the date of payment. The quoted upper limit includes a policy compliant contribution of £1,341,250.00 which relates to a minor development PP subject to a late stage viability review mechanism. The AHC, whilst capped at this figure, will only be known once viability is re-run at occupation when actual build costs and realised sales values are understood. The contribution paid could therefore be substantially less than the policy compliant sum referred to above, hence the range specified. Data is as of February 2023

<sup>3</sup> 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

- 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 2022, 254 planning applications for residential development involving a net gain of dwellings were determined<sup>4</sup> by the Council. Of these, 227 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 the overall identified needs and adopted development plan objectives. This is dealt with in more detail below.
- 1.12 If the weight to be given to the Framework is greater than the adopted development plan, this large proportion of Three Rivers' expected new housing delivery will contribute nothing towards affordable housing. This would compromise Three Rivers' ability to deliver its objectively assessed need for affordable housing.

## **2 Development Plan Policies and the WMS**

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

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

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

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

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development despite earlier permissions lapsing. The lapse percentage in this Needs Analysis (January 2023) has therefore been revised to exclude application sites which are subject to later approvals which are either outstanding, under construction or complete.

<sup>4</sup> Includes refused and approved applications. Excludes prior approval developments.

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

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

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

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

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

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

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

2.5 Due to the District’s close proximity to London, Three Rivers has traditionally been situated within a high house price area. According to data published by the Office of National Statistics (ONS) in the third quarter of 2016<sup>5</sup>, the lowest quartile house price in Three Rivers in 2016,

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<sup>5</sup> ONS (2022) *Dataset: House price to residence-based earnings ratio Table 6a*

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

representing the cheapest properties in the District was £325,000.00, making it the **fifth**<sup>6</sup> 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
<b>5</b>	<b>Three Rivers</b>	<b>£325,000.00</b>

**Table 1.**

Since the publication of the above ONS data in 2016, the general house price affordability position has grown worse. According to data published by the Office of National Statistics (ONS), the lowest quartile house price in Three Rivers in September 2021 was £385,000<sup>7</sup>. The lowest quartile house price of £385,000 places Three Rivers as the **seventh** 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). Although Three Rivers' position has improved slightly, the lowest quartile house price has risen by £60,000 from 2016 to 2021, demonstrating an ongoing worsening affordability position.

Number	Local Authority Name	Lowest Quartile house Prices (2021)
1	Elmbridge	£445,000
2	St Albans	£425,000
3	Hertsmere	£411,175
4	Windsor and Maidenhead	£402,750
5	Mole Valley	£400,000
6	Epsom and Ewell	£391,000
<b>7</b>	<b>Three Rivers</b>	<b>£385,000</b>

**Table 2.**

Lowest quartile earnings in Three Rivers in 2016 were £24,518.00 and £27,003.00 in 2021<sup>8</sup>, 13.3 times worsening to 14.3 below the lowest quartile house prices (ratio of lower quartile house prices to lower quartile gross annual, residence based earnings<sup>9</sup>). In a mortgage market where lenders are traditionally willing to lend 4 times a person's income, clearly a lending requirement at over 14 times such an income means that most first time buyers are simply unable to purchase a dwelling in the District. Such a lending ratio would have required a first-time buyer in 2021 to have a deposit of £276,988.00, or (without such a deposit) to earn £108,012.00 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).

<sup>6</sup> 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).

<sup>7</sup> Office for National Statistics (2022) *Dataset: House price to residence-based earnings ratio Table 6a* <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

<sup>8</sup> Office for National Statistics (2022) *Dataset: House price to residence-based earnings ratio Table 6b* <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

<sup>9</sup> Office for National Statistics (2022) *Dataset: House price to residence-based earnings ratio Table 6c* <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

When one considers the median affordability ratio<sup>10</sup> for Three Rivers compared to the rest of England and Wales, the position is even more serious: in 2016, the median quartile income to median quartile house price affordability ratio<sup>11</sup> was 13.77, the fourth<sup>12</sup> 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 <sup>8</sup> (2016)
1	Hertsmere	14.23
2	Mole Valley	14.18
3	Elmbridge	13.86
<b>4</b>	<b>Three Rivers</b>	<b>13.77</b>

**Table 3.**

Over the period 2016 to 2021, the median quartile house affordability ratio in Three Rivers has worsened with a rise from 13.77 in 2016 to 14.25 in 2021 (see table 4 below). Whilst Three Rivers now maintains the fifth worst affordability ratio in England and Wales (excluding London), the median affordability ratio has worsened (by 0.48), demonstrating a lack of improvement in Three Rivers' affordability position nationally.

Number	Local Authority Name	Median quartile house price affordability ratio (2021)
1	Hertsmere	14.88
2	Epsom and Ewell	14.82
3	Elmbridge	14.78
4	Mole Valley	14.69
<b>5</b>	<b>Three Rivers</b>	<b>14.25</b>

**Table 4.**

Looking at the ratio of lower quartile house prices to lower quartile to gross annual, residence based earnings, in 2016 the ratio was 13.26. By September 2021 that had risen to 14.26, showing a worsening ratio over the period from 2016 to 2021<sup>13</sup>.

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)

<sup>10</sup> Affordability ratio statistics are revised annually by the ONS to reflect revisions to the house price statistics and earnings data.

<sup>11</sup> Office for National Statistics (2022) Dataset: House price to residence-based earnings ratio Table 5c

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

<sup>12</sup> 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).

<sup>13</sup> Office for National Statistics (2022) Dataset: House price to residence-based earnings ratio Table 6c

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

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 households<sup>14</sup>.
- 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 2036<sup>15</sup>.
- 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 2036<sup>16</sup>.
- 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 need to rent over the period 2020 to 2036 as 350 in Three Rivers<sup>17</sup>. 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 annum<sup>18</sup> 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*

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<sup>14</sup> Table 33: Estimated Current Rented Affordable Housing Need, South West Hertfordshire Local Housing Needs Assessment (August 2020)

<sup>15</sup> 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)

<sup>16</sup> Table 35: Estimated level of Housing Need from Existing Households (per annum 2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

<sup>17</sup> Table 37: Estimated Annual Level of Affordable/Social Rented Housing Need (2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

<sup>18</sup> Table 42: Estimated Annual Need for Affordable Home Ownership (2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

- 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 2022 (the latest date where the most recent completion figures are available), 5,168 gross dwellings were completed. From this, 1,162 were secured as affordable housing, a total of 22.5%. This percentage is significantly below the Core Strategy target of 45% which means there was a shortfall of a further 1,162 or 22.5% affordable dwellings in order to fulfil the 45% affordable housing requirement up to 31 March 2022. 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 2021/22 (financial year), 22 sites<sup>19</sup> delivered a net gain of one or more dwellings and would therefore be required to contribute to affordable housing under Policy CP4 (either through an on-site or off-site contribution). These were made up of three major developments (14%) and 19 minor developments (86%). 10 of the 22 schemes contributed to affordable housing provision whilst 12 of the 22 schemes did not contribute:
- Four out of the 22 sites provided viability justification, in line with CP4 policy, for the absence of affordable housing provision. One of the 22 sites was found to have suitable viability justification by the Planning Inspector at an Appeal.
  - One of the 22 sites was found to not have appropriately secured affordable housing contributions in breach of CS policy CP4. However there was no agreement between the parties in respect of the viable quantum of affordable housing and the Inspector nevertheless granted planning permission. This is the only appeal decision out of the 32 that have been determined since September 2017 where the Council's position on the relative weight to be afforded Policy CP4(e) was not fully upheld.
  - One of the applications completed during the monitoring period 2021/22 which did not contribute towards affordable housing had contributed towards on-site provision during the previous monitoring period 2020/21.
  - Five 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 10 schemes which did contribute, five made contributions via commuted sums towards off-site provision; all five 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 five schemes which contributed via on-site provision in 2021/22, two were major developments and three were minor developments.

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<sup>19</sup> Sites with completions in the monitoring year 2021/22

## **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 determined<sup>20</sup> for net gain residential schemes, of which 57 were small site schemes (85%). In 2018/19 (financial year), there were 50 planning applications determined for net gain residential schemes, of which 46 were small site schemes (92%). In 2019/20 (financial year), there were 60 planning applications for net gain residential schemes determined, of which 55 were small sites 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%). In 2021/22 (financial year), there were 39 planning applications for net gain residential schemes determined, of which 36 were small site schemes (92%). It is therefore clear that a high proportion of small site schemes have been proposed in the District, equating to 89% of applications over the past four financial years.
- 2.17 In terms of numbers of completed dwellings proposed by those small site schemes, between 2011-2022 (financial years) some 429 net dwellings were completed which equates to 39 net dwellings per annum and to 22.8% over the 2011-2022 period. 22.8% is a significant proportion of the overall supply. Whilst such numbers are significant, it is acknowledged that major developments, whilst far less frequent, provided significantly greater quantities of housing. However CP4(e) does not generally require small site schemes to provide on-site affordable housing (small-scale piecemeal development is unattractive to RP's). Instead commuted sums in lieu of on- site provision are required and thus it is the sums of money secured and the contribution those make towards the provision of additional much needed affordable housing in the District which the policy should be tested against. This has been acknowledged by Planning Inspectors on appeal, as referred to at paragraph 2.21 below: APP/P1940/W/19/3230999, 27 Gable Close, Abbots Langley: *"It also identifies the importance of small sites in providing affordable housing with contributions from small sites amounting to over £2.1 million since 2011 being spent towards the delivery of 38 affordable dwellings."*

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

- 2.18 As set out at paragraphs 1.7 and 1.8 above, the commuted payments (£2.9 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 55 units of affordable housing. Furthermore, as set out at paragraph 1.8 above, small scale (1-9 unit) schemes have (as at February 2023) secured a further **£760,000.00 - £2million** (see footnote 2) in respect of unimplemented but current planning permissions. The Council continues to work with Registered Providers to deliver 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**

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<sup>20</sup> Includes refused and approved applications. Excludes prior approval developments.



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 124 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 2022 there were 255 planning permissions granted for minor (net gain) residential developments in the District. Of those only 18 have lapsed (7.1%)<sup>21</sup>. This demonstrates that the application of CP4 has not acted as a brake on small scale residential developments.

### **Relevant Appeal Decisions**

- 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:

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<sup>21</sup> See footnote 3.

*“...an Inspector to start with the development plan and any evidence presented by the LPA supporting the need for an affordable housing contribution, establish whether the proposal is in conflict with those policies if no contribution is provided for, and, if there is conflict, only then go on to address the weight to be attached to the WMS as a national policy that post-dates the development plan policies.”<sup>22</sup>*

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.

2.26 The Council’s stance has been tested on appeal on numerous occasions (32 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: 21<sup>st</sup> June 2019:**  
*“The Council has however provided robust evidence to demonstrate high affordable housing need locally and that affordability in the District continues to deteriorate. Indeed, needs analysis carried out by the Council highlights the importance of small sites in addressing shortfall and the lack of affordability that exists in the District. I apply substantial weight to this local evidence due to its recentness and the clear conclusions that can be drawn from it. Policy CP4 makes it clear that site circumstances and financial viability will be taken into account when seeking affordable housing provision.”*
- **APP/P1940/W/19/3221363, The Swallows, Shirley Road, Abbots Langley Decision date: 27<sup>th</sup> June 2019:**  
*“The Council has however provided robust evidence to demonstrate high affordable housing need locally and that affordability in the District continues to deteriorate. Indeed, needs analysis carried out by the Council highlights the importance of small sites in addressing shortfall and the lack of affordability that exists in the District. I apply substantial weight to this local evidence due to its recentness and the clear conclusions that can be drawn from it.”*
- **APP/P1940/W/19/3225445, 6 Berkely Close, Abbots Langley Decision date 5<sup>th</sup> August 2019:**  
*“The Council has provided robust evidence of high affordable housing need in the District, and in line with the findings of other appeal decisions cited by the Council, I attribute substantial weight to that need as a consequence and consider that a contribution towards the provision of affordable housing is necessary.”*
- **APP/P1940/W/19/3230999, 27 Gable Close, Abbots Langley Decision Date: 1<sup>st</sup> November 2019:**  
*“The Council has provided detailed evidence of acute affordable housing need locally: a Needs Analysis was undertaken in May 2016 after the publication of the Written Ministerial Statement which introduced the affordable housing thresholds now included in the Framework. Based on the Needs Analysis, the Council’s evidence highlights the issue of general house price affordability in the District, plus an exceptionally high need for affordable housing exacerbated by a significant shortfall in supply. It also identifies the importance of small sites in providing affordable housing with contributions from small sites amounting to over £2.1 million since 2011 being spent towards the delivery of 38 affordable dwellings.*

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<sup>22</sup> Paragraph 7, Planning Inspectorate Letter, March 2017.

*A further Needs Analysis following publication of the revised Framework in July 2018 demonstrated that housing stress had increased since 2016. The Council has therefore revisited its position following the update to national policy. There is no evidence before me that affordable housing contributions are acting as a brake on development. Rather, the evidence is that contributions from small sites collected since the policy was adopted in 2011 are delivering affordable housing on the ground. Due to its recentness and the clear conclusions that can be drawn from it, I give this local evidence substantial weight. It underpins the approach in Policy CP4 as an exception to national policy.”*

- **APP/P1940/W/19/3230911, 67 & 69 St Georges Drive, Carpenders Park, Decision date 22<sup>nd</sup> October 2019:**

*“The Council has undertaken several needs analyses, the latest being July 2018, to demonstrate the acute shortage of affordable housing in the District, especially in light of high house prices and that much of the District is also constrained by the Metropolitan Green Belt. It further highlights the importance small sites make to the contribution to the overall provision of affordable housing. Up until the end of March 2017 there has only been 22.6% of affordable housing provision which falls short of the policy requirement of 45% The shortfall demonstrates that the provision of affordable housing is still very much needed, such that Policy CP4 should continue to apply to small sites, despite the Framework and the WMS. In light of the Council’s body of evidence that demonstrates the particular housing circumstances and needs of the District, I attach substantial weight to this local evidence and consider that the national policy position does not outweigh the development plan and Policy CP4 in this instance.”*

- **APP/P1940/W/19/3230458, 19 Lynwood Heights, Rickmansworth, Decision date 11<sup>th</sup> October 2019:**

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

- **APP/P1940/W/18/3213370: No.9 Lapwing Way, Abbots Langley. Decision Date 22<sup>nd</sup> May 2019:**

*“In considering whether provision should be made for affordable housing, there are two matters that need to be addressed. Firstly, whether in principle the provisions of Policy CP4 are outweighed by more recent Government policy. Secondly, if not, whether for reasons of financial viability a contribution is not required... There is no evidence before me that the application of Policy CP4 has put a brake on small windfall sites coming forward. Indeed, such sites have contributed over £2m to the affordable housing pot since 2011... Decisions should be made in accordance with the development plan unless material considerations indicate otherwise. There are very important factors in support of the continued application of Policy CP4. These factors are not unique to Three Rivers. Government policy does not suggest that*

areas where affordability is a particular issue should be treated differently. Nonetheless, although a weighty matter, the national policy threshold is not a material consideration which outweighs the conflict with the development plan in this case. In making this policy judgment I have given considerable but not full weight to Policy CP4. I have also had regard to the other appeal decisions in the south-east referred to by the Council where Inspectors considered development plan policies seeking affordable housing against national policy. My approach is consistent with these decisions.”

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

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

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

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

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

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

- **APP/P1940/W/19/3229038: 124 Greenfield Avenue**

**Decision Date 10<sup>th</sup> 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 9<sup>th</sup> March 2020**

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

- **APP/P1940/W/19/3229189: Glenwood, Harthall Lane, Kings Langley**

**Decision Date 7<sup>th</sup> May 2020**

“The Council’s evidence sets out the acute need for affordable housing in the area and the importance of small sites in contributing to the provision of such housing. They also highlighted a large number of recent appeal decisions for small residential schemes where it has been considered that the exceptional local need should outweigh government policy, as set out in the Framework... Despite the appellant’s evidence, which included reference to a Local Plan Consultation Document (October 2018) and an analysis undertaken by them based on the Council’s Housing Land Supply Update (December 2018), it was clear to me, in the light of all the evidence before me, that a pressing need for affordable housing in the area remains. It was also clear that small sites play a key role in ensuring this provision. As such, in this

case, I am satisfied that although considerable weight should be given to the Framework, it does not outweigh the development plan policy.”

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

*“The Framework at paragraph 63 sets out that the provision of affordable housing should not be sought for residential developments that are not major developments other than in designated rural areas where policies may set out a lower threshold of 5 units or fewer. That said, there is clear evidence to suggest that there is an acute need for affordable housing in the Three Rivers District and there have been several appeal decisions which supported this view... I agree that there are special circumstances which justify the provision of affordable housing below the Framework’s suggested threshold... As a result, the proposal would be contrary to Policy CP4 of the CS which amongst other matters seeks to increase the provision of affordable homes including by means of a commuted sum payment for sites of between one and nine dwellings... I have also had regard to the obvious benefits in relation to the provision of a much-needed new dwelling. However, the benefits of this are outweighed by the lack of provision for affordable housing”*

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

**Decision Date 8<sup>th</sup> 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 Clarendon Crescent, Croyley Green**

**Decision Date 18<sup>th</sup> 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 4<sup>th</sup> 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 15<sup>th</sup> 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."*

- **APP/P1940/W/21/3276715: Land adjacent to 62-84 & 99-121 Sycamore Road, Croxley Green Decision Date: 10<sup>th</sup> March 2022**

*"Small housing sites have an important role in helping to deliver new housing in the district, including meeting a pressing need for affordable housing. For small housing sites of one to nine dwellings, paragraph e) of Policy CP4 of the CS allows for the possibility of commuted payments towards provision of off-site affordable housing. The Council indicates the indexation of such sums from a date of June 2011 to be the norm in most cases, to reflect the adoption date of the Three Rivers Affordable Housing Supplementary Planning Document (SPD), including its commuted payment formula, and so ensure that the contribution remains the same in real terms over time. Since the Council's decision, a Planning Obligation by way of Unilateral Undertaking (UU) which proposes provision for affordable housing has been submitted by the appellant. The UU5 proposes an indexation date of 1st February 2022, and not 1st June 2011 as sought by the Council. As such, the UU does not make provision for adjustment of the affordable housing sum in proportion to any increase in the Retail Prices Index during the period of more than a decade since the adoption of the SPD. In this respect, I have no certainty that the proposed affordable housing contribution would be adequate to meet local need. I therefore conclude that the proposed development would not make adequate provision for affordable housing. As such, it would not accord with Policy CP4 of the CS which seeks to meet local need for more affordable housing in the district."*

- **APP/P1940/W/21/3277747: 3 Grove Cottages, Pimlico Decision Date: 16<sup>th</sup> March 2022**

*"Policy CP4 of the Core Strategy addresses the provision of affordable housing and under it the Council has identified a requirement for a commuted affordable homes contribution of £58,650 to be paid. The appellant has indicated a willingness to make such a contribution. A draft Unilateral Undertaking (UU)3 submitted with the planning application includes an obligation intended to secure the making of an affordable housing contribution. I am content that there is a need for an affordable housing contribution to be made, with the Council having justified why such a contribution should be paid, even though the development would not be a 'major' one for the purposes of paragraph 64 of the Framework."*

- **APP/P1940/W/21/328373448: Altham Gardens, South Oxhey Decision Date: 29<sup>th</sup> April 2022**

*"The latest statistics indicate that the Council has a shortage in its supply of housing land. Although the statistics do not specify affordable housing, the SPD indicates that there is a requirement for affordable housing in and around the Three Rivers Area and given the scale of the shortfall, it is reasonable to assume that it includes affordable housing. Given the policy requirement and the identified shortage of housing generally I am satisfied that the need for the contribution sought by the Council arises from the development and satisfies the three tests in Regulation 122(2) of the CIL Regulations 2010."*

- **APP/P1940/W/22/3291286: 27 Gable Close, Abbots Langley Decision Date: 30<sup>th</sup> August 2022**

*"I am mindful that the Framework suggests 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). However, the Council has provided clear and compelling evidence to demonstrate an acute need for affordable housing in the District, including reference to numerous other appeal decisions which have supported the Council's case. There is no substantive evidence before me which would lead me to a different*

*conclusion, including with regard to the primacy of the development plan. There would therefore be an expectation that the appeal scheme would contribute financially towards the provision of affordable housing.”*

- **APP/P1940/W/21/3284630: The Puffing Field, Windmill Hill**

**Decision Date: 23<sup>rd</sup> September 2022**

*“The Council’s evidence sets out a robust case for an acute need for affordable housing in the area and the importance of small sites in contributing to the provision of such housing. On the evidence before me, I have no substantive reason to disagree with this position.”*

- **APP/P1940/W/22/3291193: Rear of The Woodyard, Sarratt**

**Decision Date: 27<sup>th</sup> October 2022**

*“The Council’s evidence sets out a robust case for an acute need for affordable housing in the area and the importance of small sites in contributing to the provision of such housing. The requirement for and the amount of the affordable housing contribution are detailed in the Council’s submissions.”*

## **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, February 2022 and February 2023 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 2021 ONS data shows that the affordability of housing in Three Rivers is deteriorating year on year and the need for affordable housing is growing. As such proposals for the residential development of sites of 10 dwellings or less (not “major development”) will currently be expected to contribute towards the provision of affordable housing in accordance with Policy CP4 as a condition of grant. The Council will keep this evidence under review.

**Appendix 1: Appeal Decisions 3146699 (Elmbridge Borough Council), 315661 (Reading Borough Council), 3142834 (South Cambridgeshire District Council) and Islington Borough Council (3154751, 3164313, 3174582, 3177927 and 3182729), Three Rivers District Council (3222318, 3221363, 3225445, 3230999, 3230911, 3230458, 3213370, 3219890, 3229274, 3238285, 3229189, 3249107)**

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

## **Sources Used:**

1. Core Strategy (October 2011)  
<http://www.threerivers.gov.uk/eqcl-page/core-strategy>

2. Annual Monitoring Report 2020/2021 (December 2021)  
<http://www.threerivers.gov.uk/eqcl-page/annual-monitoring-report>
3. Affordable Housing Supplementary Planning Document (June 2011)  
<http://www.threerivers.gov.uk/eqcl-page/supplementary-planning-documents>
4. South West Hertfordshire Local Housing Needs Assessment (August 2020)  
<https://www.threerivers.gov.uk/eqcl-page/new-local-plan-evidence-base>
5. Office of National Statistics Housing Data 2002-21  
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

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