

**PLANNING COMMITTEE – 11 AUGUST 2022**  
**Part I - DELEGATED**

**8. 22/0555/FUL - Subdivision of plot and construction of a new dwelling and construction of detached garage and driveway to serve existing dwelling at DELL COTTAGE, DOG KENNEL LANE, CHORLEYWOOD, WD3 5EL**

Parish: Chorleywood  
Expiry of Statutory Period: 06.06.2022  
(Extension of time agreed to 18.08.2022)

Ward: Chorleywood North & Sarratt  
Case Officer: Tom Norris

Recommendation: That Planning Permission be Granted subject to the completion of a S106 Agreement.

Reason for consideration by the Committee: Called to Committee by Chorleywood Parish Council unless Officers are minded to refuse for the reasons set out at 4.1.1 below.

**1 Relevant Planning History**

1.1 21/1387/FUL - Subdivision of plot and construction of a new dwelling and associated works and construction of detached garage and driveway to serve existing dwelling - 23.08.2021 – Refused

R1 *The proposed new dwelling, by virtue of its excessive and sprawling footprint, scale and massing, including height and the resultant lack of ancillary appearance compared to Dell Cottage, would erode the spaciousness of the Chorleywood Common Conservation Area when viewed from public vantage points including from the Common and Dog Kennel Lane and would fail to preserve or enhance the character and appearance of the Chorleywood Conservation Area. The proposed development would cause less than substantial harm under paragraph 202 of the NPPF and is not outweighed by public benefits. The development would therefore be contrary to Policies CP1 and CP12 of the Core Strategy (adopted October 2011), Policy DM3 of the Development Management Policies document (adopted July 2013), the Chorleywood Common Conservation Area Appraisal (2010) and the NPPF (2021).*

R2 *In the absence of an agreement under the provisions of Section 106 of the Town and Country Planning Act 1990, the development would not contribute to the provision of affordable housing. The proposed development therefore fails to meet the requirements of Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011), and the NPPF (2021).*

1.2 20/2251/FUL - Subdivision of site and construction of an attached two storey dwelling with associated works - 24.12.2020 – Withdrawn

1.3 19/1269/FUL - Construction of detached garage and extension to hardstanding - 30.08.2019 – Permitted

1.4 16/2507/FUL - Change of use of detached garage to form independent residential unit with associated parking and residential curtilage, and discharge of the Section 52 Agreement dated 24 May 1990 relating to planning permission 8/196/89 to remove occupancy restriction related to use and separate sale of the existing garage - 23.02.2017 – Refused

1.5 16/1828/FUL - Construction of detached garage in front of dwelling and associated extension to hardstanding - 26.10.2016 – Permitted

1.6 8/917/90 - Erection of detached house and double garage - 23.05.1991 – Permitted

- 1.7 8/196/89 - Triple Garage, Hobby Room - 04.06.1990
- 1.8 8/634/89 - Demolition and rebuild existing garage and extension to existing house - 20.10.1989
- 1.9 8/328/86 - Reconstruction of first floor and alterations to ground floor - 04.07.1986 – Permitted
- 1.10 8/102/85/D63 - Conversion of Existing Garage into Living Room, New Garage - 04.04.1985
- 1.11 8/24/83 – (Outline) Erection of one detached house - 03.03.1983 - Permitted

## **2 Description of Application Site**

- 2.1 The application site contains a detached dwelling and its associated residential curtilage, located on Dog Kennel Lane, Chorleywood. The site is located on the eastern side of Dog Kennel Lane, at an elevated land level to the highway. The site is accessed via an uphill track off the main highway.
- 2.2 The dwelling at Dell Cottage is set in a relatively spacious plot which slopes uphill towards the east. The dwelling is positioned in the western portion of the site with the remainder of the land forming the amenity garden of the site. The dwelling is largely traditional in character with its dark tile hipped roof form and facing brick exterior. The site also contains a large detached garage building positioned on the eastern side of the driveway access.
- 2.3 The site is located within the Chorleywood Common Conservation Area and to the south of Constables Cottage, a grade II listed building (list entry no: 1100861).
- 2.4 The site is bound by common land to its west and southern boundaries. The land to the west is predominantly grassland while the land to the south is heavily treed. The boundary treatment at the site consists of hedging, wire fencing and close boarded fencing.

## **3 Description of Proposed Development**

- 3.1 This application seeks full planning permission for the subdivision of the plot at Dell Cottage and the construction of a detached dwelling and a new garage and driveway extension to Dell Cottage.
- 3.2 It is proposed that the site is split evenly, in line with the access driveway, into two relatively equal sized parcels of land each of approximately 1,300sqm in area. The proposed dwelling would retain the existing detached garage building and courtyard area adjacent to the access drive.
- 3.3 The proposed new dwelling would be sited on a similar building line to Dell Cottage, set approximately 16.0m into the plot from the existing driveway and some 6.0m from the new dividing boundary. The built form of the proposed new dwelling would have a maximum width of 14.0m and a maximum depth of approximately 12.0m. The proposed new dwelling would consist of two principal gabled roof structures which would be connected by a flat roofed atrium.
- 3.4 The gabled roofed portions of the proposed dwelling would have eaves heights of 3.0m and overall ridge heights of 5.2m and 5.9m. The westernmost section of the building would be set within the sloping land level and therefore would have an eaves height of 5.0m and an overall height of 10.4m. The proposed flat roofed section would have an overall height of 2.8m. The proposed dwelling would consist of ground floor accommodation and a smaller section of lower ground floor accommodation and would contain four bedrooms in total.

- 3.5 The proposed finish materials consist of clay roof tiles, red facing brickwork and grey framed windows. The dwelling would contain glazing to the majority of its elevations and incorporates rooflights and glazing that cuts into the eaves within the western elevation.
- 3.6 It is proposed that a new driveway and detached garage are constructed to the frontage of Dell Cottage. The proposed driveway would measure some 70sqm in area. The proposed garage would be positioned up to the eastern site boundary with Chorleywood Common and would have a width of 6.0m, a depth of 6.0m and would have a hipped roof form with eaves height of 2.3m and an overall height of 4.3m.

## **4 Consultation**

### **4.1 Statutory Consultation**

#### **4.1.1 Chorleywood Parish Council:**

*"The Committee had Objections to this application on the following grounds and wish to CALL IN, unless the Officer are minded to refuse planning permission.*

*Should the plans or supporting information be amended by the Applicant, please advise the Parish Council so the comments can be updated to reflect the amended The property is located in the Conservation Area and due to the topography of the site and the footprint and scale of the proposal, the development would be visually intrusive and would harm the character and appearance of the Conservation Area. The layout and footprint should be revised so it is more compact instead of the sprawling layout that is currently proposed.*

*'The application proposal fails to respect the pattern of development in this part of the Conservation Area whereby the proposed dwellings are set within large gardens.*

*'The development would not contribute to the provision of affordable housing. The proposed development therefore fails to meet the requirements of Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011), and the NPPF (2021).*

*'Whilst there is no objection to the principle of development, there are strong objections to its footprint and scale and the resultant visual impact on the character and appearance of the Conservation Area. The proposal is contrary to Policies 1.1, 1.2 and 1.4 of the Chorleywood Neighbourhood Plan (2020)'*

*'Should the application be approved, we request the following conditions are secured: Landscaping, construction management plans, tree protection and biodiversity*

*The Parish Council is registering that when this is presented to planning committee, one representative from CPC will be expected to attend and speak at the meeting."*

#### **4.1.2 Conservation Officer: No objection following amended plans.**

*This application is for the subdivision of plot and construction of a new dwelling and construction of detached garage and driveway to serve existing dwelling.*

*The site is located within the Chorleywood Common Conservation Area and to the south of Constables Cottage, a Grade II listed building (list entry no: 1100861). The site is located within the Chorleywood Common Conservation Area. Designated in 1976, the area's special interest derives from the open rural nature of the Common and the variation in building stock surrounding the Common dating from the 16th/17th centuries up to the present day. The site is located in Character Zone B at the eastern edge of the Common where "there is an atmosphere of tranquillity and open space" (Character Appraisal, 4.27). The buildings in this part of the Conservation Area occupy an elevated position overlooking the Common, creating a characterful and picturesque terraced view. Views of the buildings*

*looking up (east) from Dog Kennel Lane, including Dell Cottage and Constables Cottage, are uninterrupted and they are therefore prominent features within the landscape.*

*This application follows a pre-application (ref: 19/2502/PREAPP) and two formal applications (ref: 20/2251/FUL & 21/1387/FUL). The principle of development has been established and the proposed modern design approach considered acceptable. Concerns were previously raised regarding the sprawling footprint and planform of the new dwelling. A reduction in the footprint and refinement of the layout was recommended so the new dwelling sat more discretely within the site.*

*The scale of the proposed dwelling has been reduced; the property would now result in two blocks set at the same angle attached by a low-level link. This is positive as it addresses concerns about the sprawling footprint and results in a more compact form. However, the newly proposed slate roof and slate cladding would be contentious. It was highlighted within the initial pre-application that the surrounding buildings (particularly the historic buildings) are characterised by their striking red/orange brick and clay tile roofs. Further stating that external materials are fundamental to the success of any building in this location. Handmade clay plain tiles to the roofs and first floors, with a simple eaves detail as shown, may be a more sympathetic material which is more relevant to local character and distinctiveness.*

*Whilst slate is a traditional material, the slate roof covering combined with the slate cladding would result in a very stark appearance, unrelating to the prevailing colour palette and materials seen throughout the Conservation Area. There is a preference, particularly to the elevations, for clay tiles as this would better respond to the character and appearance of the Conservation Area. The previously proposed external materials were considered a positive aspect of the scheme, the proposed use of slate would undermine this and would be contrary to previous advice.*

*The proposals would fail to preserve or enhance the character and appearance of the Conservation Area, contrary to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. With regards to the National Planning Policy Framework the level of harm is considered to be 'less than substantial' as per paragraph 202. 'Great weight' should be given to the heritage asset's conservation as per paragraph 199.*

**Officer comment:** Amended plans were received during the course of the application, reverting the materials to those proposed as part of the previous application, as requested by the Conservation Officer. The proposed clay tiles gave rise to the need for the proposed ridgeline of the dwelling to be increased in height and profile. The Conservation Officer confirmed that the proposed amendments overcame the above objection. Amended plans were re-consulted on for 21 days.

4.1.3 HCC Footpath Section: [No response received]

4.1.4 National Grid: [No response received]

## **4.2 Public/Neighbour Consultation**

4.2.1 Neighbours consulted: 9

4.2.2 Site Notice posted: 12.04.2022, expiry date: 06.05.2022

4.2.3 Press notice posted: 22.04.2022, expiry date: 14.05.2022

4.2.4 Responses received: 3 (3 Objections)

4.2.5 Neighbours were consulted for the statutory 21-day period on 13.04.2022 and were then re-consulted for 21 days on amended plans on 30.06.2022.

#### 4.2.6 Summary of responses

- Building a house in this back garden is overdevelopment
- Local views should be preserved
- The existing building has already been extended
- Existing vegetation will be permanently destroyed
- Impacts on local character, wildlife, landscape and environmental quality of area
- Hard surfacing will impact storm water runoff
- The area is a Conservation Area and the development is out of keeping
- Application previously refused and there is nothing substantially different to suggest this development should proceed
- Proposed development will exacerbate traffic problems
- Proposed development, in conjunction with other local developments, will have a detrimental impact on our home
- Concerns regarding construction disturbance

### 5 Reason for Delay

5.1 No delay. Agreed Extension of Time.

### 6 Relevant Planning Policy, Guidance and Legislation

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

In July 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 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, CP7, CP8, CP9, CP10 and CP12.

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

Chorleywood Neighbourhood Development Plan (Referendum Version, August 2020, adopted May 2021). Relevant policies include Policies 1 and 2.

The Chorleywood Common Conservation Area Appraisal (2010)

Affordable Housing Supplementary Planning Document – Approved June 2011.

### 6.3 Other

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

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

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

## **7 Planning Analysis**

### 7.1 Principle of Development

7.1.1 The proposed development would result in a net gain of one dwelling. The site is not identified as a housing site in the Site Allocations document. 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 Paragraph 119 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.' The land 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. The application would therefore need to be assessed against all other material planning considerations.

7.1.3 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.

7.1.4 The application site is within Chorleywood which is identified as a Key Centre in the Core Strategy. The Spatial Strategy of the Core Strategy advises that new development in Key Centres will be focused predominately on sites within the urban area, on previously developed land, and Policy PSP2 advises that Secondary Centres are expected to contribute 60% of housing supply over the plan period. There is no objection in principle to residential development subject to compliance with other relevant policies.

## 7.2 Affordable Housing

- 7.2.1 Appendix A of this report sets out the position of the Council and evidence relating to the application of the affordable housing threshold in Core Strategy Policy CP4: Affordable Housing.
- 7.2.2 As the proposal would result in a net gain of one dwelling it would be liable for a commuted sum payment towards affordable housing. This site lies within the “Highest Value Three Rivers” market area where the figure is £1,250 per square metre. The LPA have calculated the net gain in habitable floorspace to be 113sqm. The affordable housing payment required is, therefore, £1,250 x 113sqm = £141,250.
- 7.2.3 The applicant has confirmed that they are willing to enter into a Section 106 agreement with the LPA to secure this amount as a financial contribution in lieu of on-site provision of affordable housing. Subject to the completion of the S106 Agreement, the proposed development would therefore be acceptable in this respect in accordance with Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011).

## 7.3 Impact on Character & Appearance and Heritage assets

- 7.3.1 Policy CP1 of the Core Strategy seeks to promote buildings of a high enduring design quality that respect local distinctiveness and Policies CP3 and CP12 of the Core Strategy set out that development should make efficient use of land but should also have regard to the local context and conserve or enhance the character, amenities and quality of an area.
- 7.3.2 Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013) set out that new residential development should not be excessively prominent in relation to the general street scene and should respect the character of the street scene, particularly with regard to the spacing of properties, roof form, positioning and style of windows and doors and materials.
- 7.3.3 For new residential development, Policy DM1 states that the Council will protect the character and residential amenity of existing areas of housing from forms of “backland”, “infill” or other forms of new residential development which are inappropriate for the area. Development will only be supported where it can be demonstrated that the proposal will not result in:
- i. Tandem development
  - ii. Servicing by an awkward access drive which cannot easily be used by service vehicles
  - iii. The generation of excessive levels of traffic
  - iv. Loss of residential amenity
  - v. Layouts unable to maintain the particular character of the area in the vicinity of the application site in terms of plot size, plot depth, building footprint, plot frontage width, frontage building line, height, gaps between buildings and streetscape features (e.g. hedges, walls, grass verges etc.)
- 7.3.4 The application site is located within the Chorleywood Common Conservation Area and to the south of Constables Cottage, a Grade II listed building (list entry no: 1100861). In relation to development proposals in Conservation Areas, Policy DM3 of the Development Management Policies LDD stipulates that development will only be permitted if it preserves or enhances the character of the area. Furthermore it states that development should not harm important views into, out or within the Conservation Area.
- 7.3.5 The Chorleywood Neighbourhood Plan is also relevant. Policy 1 relates to ‘Development within Conservation Areas’ and requires that development proposals should preserve or enhance the character or appearance of the Conservation Area and use materials that area

appropriate. Policy 2 relates to the characteristics of development and requires all developments to demonstrate how they are in keeping.

- 7.3.6 The planning history is a material consideration and it is noted that a previous application for a similar form of development (21/1387/FUL) was refused at the application site on the grounds of its character impact. The reason for refusal in this instance stated that the proposed new dwelling, by virtue of its excessive and sprawling footprint, scale and massing, including height would erode the spaciousness of the Chorleywood Common Conservation Area when viewed from public vantage points including from the Common and Dog Kennel Lane and would fail to preserve or enhance the character and appearance of the Chorleywood Conservation Area.
- 7.3.7 Designated in 1976, the Conservation Area's special interest derives from the open rural nature of the Common and the variation in building stock surrounding the Common dating from the 16th/17th centuries up to the present day. The site is located in Character Zone B at the eastern edge of the Common where "there is an atmosphere of tranquillity and open space" (Character Appraisal, 4.27). The buildings in this part of the conservation area occupy an elevated position overlooking the Common, creating a characterful and picturesque terraced view. Views of the buildings looking up (east) from Dog Kennel Lane, including Dell Cottage and Constables Cottage, are uninterrupted and they are therefore prominent features within the landscape.
- 7.3.8 This current application is again for the subdivision of plot and construction of a new dwelling and construction of detached garage and driveway to serve the existing dwelling. The key difference between this application and the previous application is that the proposed new dwelling has been reduced in scale.
- 7.3.9 As was considered as part of the previous application of the site, the principle of the subdivision of the site and the proposed modern design approach is considered to be acceptable. Additionally, it should be noted that each of these matters are not objected to in principle by the Conservation Officer. The Conservation Officer notes that concerns were previously raised regarding the sprawling footprint and planform of the new dwelling and that a reduction in the footprint and the refinement of the layout was required so that any new dwelling sat more discretely within the site.
- 7.3.10 The Conservation Officer notes that the scale of the proposed dwelling has been reduced with the property now containing two gabled roofed elements, set at the same angle and attached by a low-level, flat roofed link. The Conservation Officer considers that this addresses concerns about the sprawling footprint and results in a more compact form of development. It is considered, in conjunction with the comments of the Conservation Officer, that the proposed development has overcome the scale and design concerns upon which it was previously refused. It is acknowledged that some objection comments refer to the proposed dwelling being harmfully visible from public vantage points within the Chorleywood Common Conservation Area. Whilst this is factored into consideration, it is considered that the scale of dwelling enables it to sit comfortably within the site and that it would not appear cramped or harmfully erode the spaciousness or character of the area. It is also noted that views from the Common would be somewhat restricted by woodland and the existing house.
- 7.3.11 The Conservation Officer, in their initial written comments made reference to the proposed materials and considered these, including slate roof and slate cladding, to be harmful. It was recommended by the Conservation Officer that the materials were reverted back to the previously proposed palette as they were considered a positive aspect of the previously refused scheme and better responded to the character and appearance of the Conservation Area. The proposed materials were amended during the course of the application to clay roof tiles, red facing brickwork and grey framed windows. The proposed change was discussed verbally with the Conservation Officer who confirmed that this overcame their



only outstanding objection to the scheme. A condition will be included on any permission granted requiring final material details.

- 7.3.12 The proposed development includes a new garage and driveway to Dell Cottage. The garage would be sited forward of Dell Cottage adjacent to the site boundary with Chorleywood Common. Planning permission has previously been granted (19/1269/FUL) for a garage of a slightly larger scale in a similar location however sited further from the boundary. Whilst the proposed garage would be partially visible from the common, given the proposed scale and traditional hipped roof form design of the building, it is not considered that it would result in harm to the character and appearance of the dwelling or Conservation Area. It is considered that the proposed driveway would be acceptable in terms of its impact upon the host dwelling and street scene. The site would retain a significant amount of soft landscaping and the area of hardstanding would not detract from the appearance of the site or Conservation Area.
- 7.3.13 In respect of the impact on the grade II listed building, Constable Cottage, given the siting of the new dwelling, its scale and the separation distance it is not considered that the development would harm the setting of the listed building.
- 7.3.14 In summary, whilst the proposed development is of more contemporary design given its positioning, use of sympathetic materials and overall scale, it would preserve the character and appearance of the Chorleywood Common Conservation Area and not harm the setting of the adjacent listed building. Therefore the amended development would accord with Policy CP12 of the Core Strategy, Policies DM1, DM3 and Appendix 2 of the Development Management Policies LDD, the Chorleywood Common Conservation Area Appraisal and the Chorleywood Neighbourhood Plan.

#### 7.4 Highways, Access & Car Parking

- 7.4.1 Policy CP10 of the Core Strategy requires development to demonstrate that it will provide a safe and adequate means of access. Policy DM13 and Appendix 5 of the Development Management Policies LDD advises on off street car parking requirements.
- 7.4.2 Appendix 5 sets out the following parking standards:
- 4 bedroom dwelling: 3 spaces per dwelling
- 7.4.3 The proposed dwelling would utilise the existing detached garage which would meet the parking requirements stated above. The existing dwelling would be served by a new paved driveway and garage large enough to meet the above parking standards. The existing and proposed dwelling would utilise the existing private access drive and there is sufficient space within the frontages of each site to satisfactorily manoeuvre and exit the site in a forward gear.
- 7.4.4 The proposed development is therefore acceptable in accordance with Policy CP10 of the Core Strategy (adopted October 2011) and Policy DM13 and Appendix 5 of the Development Management Policies document (adopted July 2013).

#### 7.5 Residential Amenity

- 7.5.1 Policy CP12 of the Core Strategy (adopted October 2011) states that development should 'protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space'. Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013) set out that development should not result in loss of light to the windows of neighbouring properties nor allow overlooking, and should not be excessively prominent in relation to adjacent properties. To avoid loss of light and an overbearing impact on neighbouring, two storey development at the rear of properties should not intrude a 45 degree line taken from the

point on the joint boundary level with the rear wall of the neighbour, although the principle is dependent on factors such as spacing.

- 7.5.2 The proposed dwelling would be built on similar front and rear building lines to Dell Cottage and, given its scale and position to the 'side' of Dell Cottage it is not considered that it would result in loss of light or have an overbearing impact to this neighbour. It is also considered that, given the position of the new dwelling in the plot, it is a satisfactory arrangements in terms of impact upon the new dwelling.
- 7.5.3 It is noted that the proposed dwelling includes glazing within the flank facing Dell Cottage and within the rear and that due to the change in levels, there would be a degree of overlooking between the two, however, obscure glazing is proposed to the first floor flank openings which would be secured by condition and subject to this it is not considered that the proposal would result in demonstrable harm in this regard. Privacy fins to protect neighbouring amenity are also shown on the proposed plans.
- 7.5.4 Cedars House to the east is at a higher level to the existing and proposed dwellings such that the proposed development would not appear overbearing to this neighbour. Similarly, the spacing is such that Cedars House would not appear overbearing to the proposed dwelling. The separation distances and relative siting are such that overlooking would not be facilitated.
- 7.5.5 The proposed development would provide policy compliant amenity space for the new dwelling and the retained garden serving Dell Cottage would also comply with standards.
- 7.5.6 The proposed garage would be of limited scale and would not result in harm to neighbouring amenity.
- 7.5.7 Subject to conditions, the proposed development would not result in a significant adverse impact on the residential amenity of neighbouring or future occupiers and the development is acceptable in this regard in accordance with Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

## 7.6 Trees & Landscape

- 7.6.1 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.' Policy DM6 of the Development Management Policies LDD advises that 'development proposals should demonstrate that existing trees, hedgerows and woodlands will be safeguarded and managed during and after development in accordance with the relevant British Standard.
- 7.6.2 The application site contains trees covered by Tree Preservation Orders and other mature trees within the vicinity. The Landscape Officer was consulted on the proposed development and confirmed that the proposal would be unlikely to cause a direct impact to the trees however recommended the inclusion of a condition for protective measures to be put in place prior to the works commencing on site. A pre-commencement condition would therefore be included on any permission requiring tree protection.

## 7.7 Refuse & Recycling

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

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

- 7.7.2 The submitted plans indicate both the existing and proposed dwelling would have adequate space for bin storage including the construction of a purpose built bin store for the proposed dwelling. The proposed dwelling is located within a residential area and is considered acceptable in terms of distance for collection and would be in accordance with Policy CP1 of the Core Strategy (adopted October 2011) and Policy DM10 of the Development Management Policies LDD (adopted July 2013).

## 7.8 Sustainability

- 7.8.1 Policy DM4 of the Development Management Policies document states that applications for new residential development will be required to demonstrate that the development will meet a zero carbon standard (as defined by central government). However the government are not pursuing zero carbon at this time and therefore the requirements of DM4 to achieve a 5% saving in CO2 over 2013 Building Regulations Part L would continue to apply.

- 7.8.2 The application is accompanied by a report by a Sustainable Energy Statement, dated 4 March 2022. The report confirms that a range of energy efficiency measures are to be incorporated into the building fabric in order to reduce energy demand and confirms that the proposed scheme is to secure at least a 5% reduction in CO2 emissions below the baseline emission rate based on Part L 2013 edition.

## 7.9 CIL

- 7.9.1 Core Strategy Policy CP8 requires development to make adequate contribution to infrastructure and services. The Three Rivers Community Infrastructure Levy (CIL) came into force on 1 April 2015. The levy applies to new dwellings and development comprising 100sq. metres or more of floorspace (net gain), including residential extensions, although exemptions/relief can be sought for self-build developments and affordable housing. The Charging Schedule sets out that the application site is within 'Area A' within which there is a charge of £180 per sq. metre of residential development.

## 7.10 Biodiversity

- 7.10.1 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. The Habitats Directive places a legal duty on all public bodies to have regard to the habitats directive when carrying out their functions.

- 7.10.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of this application in accordance with Policy CP9 of the Core Strategy and Policy DM6 of the Development Management Policies document. National Planning Policy requires Local Authorities to ensure that a protected species survey is undertaken for applications where biodiversity may be affected prior to the determination of a planning application. A Biodiversity Checklist was submitted with the application and states that no protected species or biodiversity interests will be affected as a result of the application.

## 8 **Recommendation**

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

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

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

- C2 The development hereby permitted shall be carried out in accordance with the following approved plans: SBK-833-PL10, SDK-833-PL02, SDK-833-PL11, SDK-833-PL20 REV A, TS18-377A\1, TS18-377A\2, TS18-377A\2, TS18-377A\3, TS18-377A\3, TS18-377A\4, TS18-377A\5

Reason: For the avoidance of doubt and in the proper interests of planning and in the interests of the visual amenities of the locality, the character and appearance of the Conservation Area and the residential amenity of neighbouring occupiers in accordance with Policies CP1, CP9, CP10 and CP12 of the Core Strategy (adopted October 2011), Policies DM1, DM3, DM4, DM6, DM10, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013), Policies 1 and 2 of the Chorleywood Neighbourhood Plan (2020) and the Chorleywood Common Conservation Area Appraisal (2010).

- C3 No operations (including tree felling, pruning, demolition works, soil moving, temporary access construction, or any other operation involving the use of motorised vehicles or construction machinery) whatsoever shall commence on site in connection with the development hereby approved until the branch structure and trunks of all trees shown to be retained and all other trees not indicated as to be removed and their root systems have been protected from any damage during site works, in accordance with a scheme designed in accordance with BS5837:2012, to be submitted to and approved in writing by the Local Planning Authority.

The protective measures, including fencing, shall be undertaken in full accordance with the approved scheme before any equipment, machinery or materials are brought on to the site for the purposes of development, and shall be maintained as approved until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made. No fires shall be lit or liquids disposed of within 10.0m of an area designated as being fenced off or otherwise protected in the approved scheme.

Reason: This condition is a pre-commencement condition to ensure that no development takes place until appropriate measures are taken to prevent damage being caused to trees during construction and to meet the requirements of Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

- C4 Prior to the commencement of works above ground level, samples and details of the proposed external materials and finishes to the proposed dwelling, including details of windows, rooflights and rainwater goods, and the proposed external materials and finishes to the garage and driveway to the existing dwelling shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed only in accordance with the details approved by this condition.

Reason: To ensure that the external appearance of the building is satisfactory in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM3 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

- C5 Prior to the commencement of works above ground level, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority, which shall include the location of all existing trees and hedgerows affected by the proposed development, and details of those to be retained, together with a scheme detailing measures for their protection in the course of development.

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

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

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

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

- C6 Prior to the first occupation of the dwelling hereby permitted the first floor flank windows shall be fitted with purpose made obscured glazing and shall be top level opening only at 1.7m above the floor level of the rooms in which the window is installed. The proposed "privacy fins" to protect the amenity of Dell Cottage shall be installed prior to the first occupation of the dwelling hereby permitted. The windows and privacy measures shall be permanently retained in that condition thereafter.

Reason: To safeguard the amenities of the occupiers of neighbouring residential properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

- C7 Prior to the first occupation of the dwellings hereby permitted details indicating the positions, design, materials and type of all boundary treatments, including gates, to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall thereafter be erected prior to occupation and only in accordance with the approved details.

Reason: To safeguard the visual amenities of neighbouring properties and the character of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

- C8 The development hereby permitted shall be implemented in accordance with the details of the Sustainable Energy Statement, dated 4 March 2022 prior to the occupation of the development and shall be permanently maintained thereafter. No photovoltaics shall be installed unless details have first been submitted to and approved in writing by the LPA.

Reason: To ensure that the development meets the requirements of Policy CP1 of the Core Strategy (adopted October 2011) and Policy DM4 of the Development Management Policies LDD (adopted July 2013) and to make as full a contribution to sustainable development principles as possible.

- C9 Immediately following the implementation of this permission, notwithstanding the provisions of Part 1, Classes A, B, C, D, E & F or Part 2, Class A & C of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification) no

development of any of the above classes shall be constructed or placed on any part of the land subject of this permission without such consent as aforesaid.

Reason: To ensure adequate planning control over further development having regard to the visual amenities of the locality, the residential amenity of neighbouring occupiers and to protect the openness of the Green Belt in accordance with Policies CP1, CP9, CP10, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM2, DM6, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).

#### Informatives

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

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

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

Community Infrastructure Levy (CIL) - If your development is liable for CIL payments, it is a requirement under Regulation 67 (1) of The Community Infrastructure Levy Regulations 2010 (As Amended) that a Commencement Notice (Form 6) is submitted to Three Rivers District Council as the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. DO NOT start your development until the Council has acknowledged receipt of the Commencement Notice. Failure to do so will mean you will lose the right to payment by instalments (where applicable), lose any exemptions already granted, and a surcharge will be imposed.

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

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

- 12 The applicant is reminded that the Control of Pollution Act 1974 allows local authorities to restrict construction activity (where work is audible at the site boundary). In Three Rivers such work audible at the site boundary, including deliveries to the site and running of equipment such as generators, should be restricted to 0800 to 1800 Monday to Friday, 0900 to 1300 on Saturdays and not at all on Sundays and Bank Holidays.
- 13 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development

Management Procedure) (England) Order 2015. The development maintains/improves the economic, social and environmental conditions of the District.

- 14 The applicant is hereby advised to remove all site notices on or near the site that were displayed pursuant to the application.
  
- 15 The applicant is reminded that this planning permission is subject to either a unilateral undertaking or an agreement made under the provisions of Section 106 of the Town and Country Planning Act 1990.

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



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

### Background

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

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<sup>1</sup> The revised National Planning Policy Framework was updated in February 2019 and 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 63 is a material consideration. The weight to be given to it is a matter for the decision maker when determining each planning application. This note explains the advice from the Head of Planning Policy & Projects and Head of Regulatory Services on the weight that they recommend should be given to NPPF 63 for these purposes in light of the Needs Analysis.

1.7 Since the adoption of its Core Strategy in 2011 and as of 31 December 2021, Three Rivers has received small site affordable housing contributions amounting to over **£2.4 million**. Utilising those monies, development is has funded the delivery of 21 units of affordable housing, with the remaining monies utilised as a contribution towards the delivery of a further 17 affordable dwellings. It is clear that Three Rivers' policy has already delivered a significant contribution towards the delivery of much needed affordable housing in the district.

1.8 In addition to the £2.4 million already received, small scale (1-9 unit) schemes have secured to date a further **£2.7million to £4.0million<sup>2</sup>** of affordable housing contributions in respect of unimplemented but current planning permissions. All of those schemes were agreed to be viable with those sums secured. The Council has several large scale future residential developments planned which will aim to deliver substantial quantities of further affordable housing in the District in the medium term future, utilising those additional affordable housing contributions as and when they are received.

1.9 Policy CP4 makes it clear that a requirement for a scheme to contribute towards the provision of affordable housing is subject to viability considerations and is therefore consistent with paragraph 122 of the Framework. The application of CP4, which includes this in built viability allowance, cannot properly be said to be a barrier to delivery. Indeed between 1 October 2011 and 31 March 2021, 250 planning permissions were granted for minor residential developments which contribute a net dwelling gain. Of those only 13 have been permitted to lapse which is only 5.2% of all such 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 2022

<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

- 1.10 Current evidence of housing need in the District is noted below at 2.4 to 2.11. It confirms that the needs underlying the adopted development plan policy remain pressing.

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

- 1.11 It is important to acknowledge the percentage of residential development schemes which tend to come forward in the District which propose the delivery of less than 10 dwellings: from 1 April 2017 to 31 March 2021, 215 planning applications for residential development involving a net gain of dwellings were determined<sup>4</sup> by the Council. Of these, 191 applications (89%) were for schemes which proposed a net gain of 1-9 units. Having a large number of small sites is an inevitable consequence of the District being contained within the Metropolitan Green Belt. The contribution to both market housing supply and affordable housing supply are therefore both material to overall identified needs and adopted development plan objectives. This is dealt with in more detail below.
- 1.12 If the weight to be given to the Framework is greater than the adopted development plan, this large proportion of Three Rivers' expected new housing delivery will contribute nothing towards affordable housing. This would compromise Three Rivers' ability to deliver its objectively assessed need for affordable housing.

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

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

- Consider the starting point under the development plan policies
- Have regard to the Framework and its objectives if those development plan policies would be breached – it is officers' view that the Framework should be given considerable weight as a statement of national policy post-dating the Core Strategy
- Consider up to date evidence on housing needs
- 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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subsequent planning applications which were granted approval. Such sites have therefore still come forward for development despite earlier permissions lapsing. The lapse percentage in this Needs Analysis (January 2022) has therefore been revised to exclude application sites which are subject to later approvals which are either outstanding, under construction or complete.

<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 (2021) *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 2020 was £365,000<sup>7</sup>. The lowest quartile house price of £365,000 places Three Rivers as the **fourth** most expensive local authority area in England and Wales (excluding London), out of a total of three hundred and three local authority areas (see table 2 below). The lowest quartile house price has risen by £40,000 from 2016 to 2020, demonstrating a worsening affordability position.

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

**Table 2.**

Lowest quartile earnings in Three Rivers in 2016 were £24,518.00 and £26,983.00 in 2020, 13.3 times worsening to 13.5 below the lowest quartile house prices (ratio of lower quartile house prices to lower quartile gross annual, residence based earnings<sup>8</sup>). In a mortgage market where lenders are traditionally willing to lend 3.5 times a person's income, clearly a lending requirement at over 13 times such an income means that most first time buyers are simply unable to purchase a dwelling in the District. Such a lending ratio would have required a first time buyer in 2020 to have a deposit of £270,560.00, or (without such a deposit) to earn £94,440.00 per annum to get onto the lowest/cheapest rung of the property ladder. An additional Stamp Duty payment would also have been due (subject to COVID related temporary relaxation).

When one considers the median affordability ratio<sup>9</sup> for Three Rivers compared to the rest of England and Wales, the position is even more serious: in 2016, the median quartile income to median quartile house price affordability ratio was 13.77, the fourth<sup>10</sup> worst affordability

<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 (2021) *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 (2020) *Dataset: House price to residence-based earnings ratio Table 6b* <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

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

<sup>10</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).

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

Number	Local Authority Name	Median quartile house price affordability ratio <sup>1</sup> (2020)
1	Mole Valley	16.84
2	Elmbridge	14.17
3	Epsom and Ewell	13.26
<b>4</b>	<b>Three Rivers</b>	<b>12.92</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 2020 that had risen to 13.53, showing a worsening ratio over the period from 2016 to 2020.

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

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

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

#### *Affordable Housing Need - To Rent*

- 2.7 The South West Hertfordshire Local Housing Needs Assessment (LHNA) (August 2020) found that at that time there were approximately 1,276 households within Three Rivers that were situated in unsuitable housing. Unsuitability is based on the numbers of homeless households and in temporary accommodation, households in overcrowded housing, concealed households and existing affordable housing tenants in need. 57% of these households are estimated to be unable to afford market housing without subsidy, which means the revised gross need is reduced to 727 households<sup>11</sup>.

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

- 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>12</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>13</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>14</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>15</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*

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

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

- 2.13 Core Strategy CP4 requires around 45% of all new housing in the District to be affordable. As stated previously, prior to the WMS, all new developments that had a net gain of one or more dwellings would, subject to viability, be expected to contribute towards this.
- 2.14 Since the start of the plan period from 1 April 2001 to 31st March 2021 (the latest date where the most recent completion figures are available), 4,965 gross dwellings were completed. From this, 1,128 were secured as affordable housing, a total of 22.7%. This percentage is significantly below the Core Strategy target of 45% which means there was a shortfall of 1,107 or 22.3% in order to fulfil the 45% affordable housing requirement up to 31 March 2021.

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<sup>12</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>13</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>14</sup> Table 37: Estimated Annual Level of Affordable/Social Rented Housing Need (2020-2036), South West Hertfordshire Local Housing Needs Assessment (August 2020)

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

This shortfall only exacerbates the already pressing need for small sites to contribute towards the provision of affordable housing.

2.15 In the latest monitoring period of 2020/21 (financial year), 26 sites<sup>16</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 four major developments (15%) and 22 minor developments (86%). 17 of the 26 schemes contributed to affordable housing provision whilst nine of the 26 schemes did not contribute:

- Four out of the 26 sites provided viability justification, in line with CP4 policy, for the absence of affordable housing provision.
- Four of the applications were determined during the 2014/15 and 2016/17 periods noted at 1.2 above (when the Council was dealing with applications on the basis that the WMS should be given overriding effect regardless of the viability position on specific schemes). Affordable housing provision was forgone on them on this basis, which is now reflected in the low affordable provision as they are built out.
- Of the 17 schemes which did contribute, nine made contributions via commuted sums towards off-site provision; all nine schemes were minor developments, demonstrating the important role of small sites in collecting financial payments to be spent on affordable housing provision. Of the remaining eight schemes which contributed via on-site provision in 2020/21, three were major developments and five were minor developments, with four of the five minor developments delivered by Registered Providers (17/2077/FUL, 17/2606/FUL – Three Rivers District Council; 17/0883/FUL – Thrive Homes; 14/1168/FUL – Watford Community Housing Trust). This reflects the pattern of on-site delivery from large schemes, with commuted sums from minor developments, unless delivered by Registered Providers.

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

2.16 In 2017/2018 (financial year), there were 67 planning applications determined<sup>17</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%). It is therefore clear that a high proportion of small site schemes have been proposed in the District, equating to 89% of applications over the past four financial years.

2.17 In terms of numbers of completed dwellings proposed by those small site schemes, between 2011-2021 (financial years) some 384 net dwellings were completed which equates to 38 net dwellings per annum and to 22.2% over the 2011-2021 period. 22.2% is a significant proportion of the overall supply. Whilst such numbers are significant, it is acknowledged that major developments, whilst far less frequent, provided significantly greater quantities of

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<sup>16</sup> Sites with completions in 2020/21

<sup>17</sup> Includes refused and approved applications. Excludes prior approval developments.



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 (£2.4 million) spent on the provision of affordable housing which have been collected by the Council to date have made a direct contribution towards the identified affordable housing shortfall in the district: providing some 21 units with some of the monies being utilised to assist in the delivery of a further 17 units (38 in total). Furthermore, as set out at paragraph 1.8 above, small scale (1-9 unit) schemes have (as at February 2022) secured a further **£2.7million - £4.0million** (see footnote 2) in respect of unimplemented but current planning permissions. The Council has several large scale future residential developments planned which will aim to deliver substantial quantities of further affordable housing in the District in the medium term future, utilising those additional affordable housing contributions as and when they are received. It is clear therefore that CP4(e) has made and will continue to make a significant contribution towards the provision of much needed affordable housing in the District in the future.

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

- 2.19 As set out at paragraph 1.9 above, Policy CP4 makes it clear that a requirement for a scheme to contribute towards the provision of affordable housing is subject to viability considerations and is therefore consistent with paragraph 122 of the Framework. The application of CP4, which includes this in built viability allowance, cannot properly be said to be a barrier to delivery. The Council accepts that if, properly tested, viability cannot be established on current day costs and values then a scheme should not currently be required to provide or contribute to affordable housing delivery. Between 1 October 2011 and 31 March 2021 there were 250 planning permissions granted for minor (net gain) residential developments in the District. Of those only 13 have lapsed (5.2%)<sup>18</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

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<sup>18</sup> See footnote 3.

attached greater weight to their affordable housing policy than to the WMS as a consequence of local evidence of substantial affordable housing need. Copies of these three appeals are attached to Appendix 1. The Council considers these appeal decisions to be of continuing relevance post the new Framework.

- 2.21 The Inspectors appointed to determine these appeals stated that the WMS needed to be addressed alongside existing Local Plan policy. Within each case, the Inspectors found that there was substantial evidence of a pressing need for affordable housing within these three local authority areas. On this basis, it was considered that local policy had significant weight and there was strong evidence to suggest that these issues would outweigh the WMS within these three cases.
- 2.22 In March 2017 the Planning Inspectorate issued a response to a letter from Richmond and Wandsworth Councils regarding the perceived inconsistency of approach by the inspectorate in relation to a further five appeal decisions made in 2016, regarding the weight that was made to the WMS. A copy of this letter is attached to Appendix 2.
- 2.23 Out of these five decisions, the Planning Inspectorate considered that three appeal decisions were reasonable, and fairly reflected the Court of Appeal's decision that although great weight should be attached to the WMS as a material circumstance; planning applications must be decided in accordance with the development plan, unless material considerations indicate otherwise.
- 2.24 However, the Planning Inspectorate considered that the decision taken on the two remaining appeals which stated that lesser weight was afforded to local policies because they were now, in part, inconsistent with national policy, was not appropriate. The seventh paragraph in the response from the Inspectorate, summarised the approach that the Inspectorate acknowledges should be taken:

*"...an Inspector to start with the development plan and any evidence presented by the LPA supporting the need for an affordable housing contribution, establish whether the proposal is in conflict with those policies if no contribution is provided for, and, if there is conflict, only then go on to address the weight to be attached to the WMS as a national policy that post-dates the development plan policies."*<sup>19</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 (26 decisions as at the date of this document) and the Planning Inspectorate have repeatedly concluded (that whilst the NPPF carries considerable weight, it does not outweigh CP4 of the Councils development plan given the acute and substantial need for affordable housing in the District and the important contribution small sites make towards addressing this shortfall. Below are extracts from a few of those decisions:

- **APP/P1940/W/19/3222318, Eastbury Corner, 13 Eastbury Avenue, Northwood, Decision date: 21<sup>st</sup> June 2019:**

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<sup>19</sup> Paragraph 7, Planning Inspectorate Letter, March 2017.

*“The Council has however provided robust evidence to demonstrate high affordable housing need locally and that affordability in the District continues to deteriorate. Indeed, needs analysis carried out by the Council highlights the importance of small sites in addressing shortfall and the lack of affordability that exists in the District. I apply substantial weight to this local evidence due to its recentness and the clear conclusions that can be drawn from it. Policy CP4 makes it clear that site circumstances and financial viability will be taken into account when seeking affordable housing provision.”*

- **APP/P1940/W/19/3221363, The Swallows, Shirley Road, Abbots Langley**

**Decision date: 27<sup>th</sup> June 2019:**

*“The Council has however provided robust evidence to demonstrate high affordable housing need locally and that affordability in the District continues to deteriorate. Indeed, needs analysis carried out by the Council highlights the importance of small sites in addressing shortfall and the lack of affordability that exists in the District. I apply substantial weight to this local evidence due to its recentness and the clear conclusions that can be drawn from it.”*

- **APP/P1940/W/19/3225445, 6 Berkely Close, Abbots Langley**

**Decision date 5<sup>th</sup> August 2019:**

*“The Council has provided robust evidence of high affordable housing need in the District, and in line with the findings of other appeal decisions cited by the Council, I attribute substantial weight to that need as a consequence and consider that a contribution towards the provision of affordable housing is necessary.”*

- **APP/P1940/W/19/3230999, 27 Gable Close, Abbots Langley**

**Decision Date: 1<sup>st</sup> November 2019:**

*“The Council has provided detailed evidence of acute affordable housing need locally: a Needs Analysis was undertaken in May 2016 after the publication of the Written Ministerial Statement which introduced the affordable housing thresholds now included in the Framework. Based on the Needs Analysis, the Council’s evidence highlights the issue of general house price affordability in the District, plus an exceptionally high need for affordable housing exacerbated by a significant shortfall in supply. It also identifies the importance of small sites in providing affordable housing with contributions from small sites amounting to over £2.1 million since 2011 being spent towards the delivery of 38 affordable dwellings.*

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

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

*“The Council has undertaken several needs analyses, the latest being July 2018, to demonstrate the acute shortage of affordable housing in the District, especially in light of high house prices and that much of the District is also constrained by the Metropolitan Green Belt. It further highlights the importance small sites make to the contribution to the overall provision of affordable housing. Up until the end of March 2017 there has only been 22.6% of affordable housing provision which falls short of the policy requirement of 45% The shortfall demonstrates that the provision of affordable housing is still very much needed, such that Policy CP4 should continue to apply to small sites, despite the Framework and the WMS. In light of the Council’s body of evidence that demonstrates the particular housing circumstances and needs of the District, I attach substantial weight to this local evidence and consider that the*

*national policy position does not outweigh the development plan and Policy CP4 in this instance.”*

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

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

*“The Council states that its Strategic Housing Market Assessment (2010) has demonstrated that there is a significant affordable housing need locally due to very high house prices and rents and a constricted supply of suitable housing sites. Further, the South West Hertfordshire Strategic Housing Market Assessment (2016) estimated a net affordable housing need of 14,191 in the District between 2013-36 and there is also a worsening situation with regards to affordability. Based on the 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 Claremont Crescent, Croxley 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.”*

## **Conclusion**

- 2.27 Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Having regard to the Framework as a material consideration of significant weight, officers' view is that the local evidence of affordable housing need continues to deserve significant weight in deciding whether, for the purposes of Section 38(6), the revised Framework policies weigh sufficiently against the Core Strategy Policy CP4. Having undertaken this assessment in 2017 and further reviewed it post the new NPPF in 2018, in December 2019, December 2020 and February 2022 with regard to more up to date evidence, where available, officers are of the view that the Framework does not outweigh the weight to be attached to the local evidence of affordable housing need. That evidence shows that the need for affordable housing in Three Rivers is great and the contribution that small sites have made has been significant. Furthermore comparisons between 2016 and 2020 ONS data shows that the affordability of housing in Three Rivers is deteriorating year on year and the need for affordable housing is growing. As such proposals

for the residential development of sites of 10 dwellings or less (not “major development”) will currently be expected to contribute towards the provision of affordable housing in accordance with Policy CP4 as a condition of grant. The Council will keep this evidence under review.

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

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

#### **Sources Used:**

1. Core Strategy (October 2011)  
<http://www.threerivers.gov.uk/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 2002-20  
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

**February 2022**