

Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit

Update – February 2017

Introduction

1. Following the Government's Written Ministerial Statement (WMS) (28 November 2014) and subsequent changes to Planning Practice Guidance (PPG) dated 19 May 2016, both relating to the exemption of small sites from planning contributions and the Vacant Building Credit, Elmbridge Borough Council published a Statement (June 2016)¹ setting out how it intended to address the conflict between national and local policy, namely Policy CS21 of the Core Strategy (July 2011).
2. The Council's position is to consider on a case by case basis whether local circumstances with regard to affordable housing and the nature of the development sites in the Borough are sufficient to warrant the application of Policy CS21 or whether greater weight should be attached to the WMS and changes to PPG.
3. As set out in its Statement, the Council's position is to continue to consider Policy CS21 as part of the decision making process for any relevant application. It is stated that where applicants consider that the charge is disproportionate, they will be requested to submit relevant information setting out scheme viability for independent assessment as set out in our Developer Contributions SPD. Applicants are also to be encouraged to set out why the application of Policy CS21 is considered to be disproportionate in relation to the circumstances of the development scheme.
4. It has been six months since the Government amended PPG and the Council took this position. This update has therefore been prepared to provide an indication of the success of the Council's approach.

¹ Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (June 2016) - <http://www.elmbridge.gov.uk/planning/developer-contributions/>

5. The emphasis of this update is on the Government's small site exemption. The implication of the Government's Vacant Building Credit (VBC)² to date, has had very limited impact on the Council's ability to collect financial contribution towards the delivery of affordable housing or indeed the provision of affordable homes on-site.

Planning Applications

6. Since PPG was amended on 19 May 2016 and up to 25 November 2016, the Council has determined and / or received appeal decisions determined by the Planning Inspector on 41 planning applications where the consideration of Policy CS21 was relevant. Of these applications:
 - 32 related to the provision of 1 – 4 gross units whereby Policy CS21 would require a financial contribution equivalent to providing 20% of the gross number of dwellings as affordable;
 - 1 related to the provision of 5 gross units whereby Policy CS21 would require 20% of the gross number of dwellings on-site as affordable;
 - 5 related to the provision of 6 – 14 gross units whereby Policy CS21 would require 30% of the gross number of dwellings on-site as affordable; and
 - 3 related to the provision of 15 gross units or more whereby Policy CS21 would require 40% of the gross number of dwelling on-site as affordable.
7. Of the 41 planning applications, 38 development schemes applied to sites of 10 units or less – the Government's threshold for the small sites exemption. However, 1 application related to a site of 10 dwellings or less with a combined Gross Internal Area (GIA) of more than 1000 sqm. In accordance with the WMS and PPG, the site is therefore not exempt. In addition, 1 application was for the provision of 2 additional affordable housing units on-site as part of a larger existing sheltered accommodation scheme. Therefore, this leaves 36 applications whereby the Council has had to consider whether local circumstances allowed greater weight to be applied to Policy CS21 than to the WMS and PPG, as part of the decision making process
8. Focusing on these 36 applications the Council has granted planning permission for 25 development schemes; with 24 of them having signed unilateral undertakings agreeing to pay towards the provision of affordable housing in

² As set out in Planning Practice Guidance (PPG), national policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer can be offered a financial credit equivalent to the existing gross floorspace of relevant vacant building when the Council calculates its affordable housing contribution. Affordable housing contributions may be required for any increase in floorspace.

accordance with Policy CS21. Of these applications, 22 development schemes are paying the required affordable housing contribution in full whilst 2 development schemes are paying a reduced contribution on viability grounds following evidence being submitted and independently verified showing that it would be unviable otherwise. In one instance the Council waived the contribution towards affordable housing in full. The approach to reducing financial contributions where viability is demonstrated to be an issue is in accordance with Policy CS21 and the Council's Developer Contributions SPD. **From the 24 applications, £1.72m towards the provision of affordable housing has been agreed to be paid.**

9. The Council's approach to affordable housing contributions is to require payment prior to the carrying out of any Material Operation i.e. prior to commencement. Until the development has commenced applicants can submitted a deed of variation to amend any condition attached to the planning permission e.g. the removal of the obligation. Other than one application to amend the phasing of an affordable housing contribution, no such deeds have been received. At 25 November 2016 none of the 24 development schemes had commenced however, applications have been received for 2 development schemes with amended proposals. If approved, this will vary the amount of affordable housing contribution to be paid in accordance with Policy CS21.
10. Of the 24 applications having agreed to pay an affordable housing contribution in accordance with Policy CS21, the **average amount agreed is £71,869**. The **lowest amount agreed be paid is £14,370** (for 1 additional dwelling in Weybridge with a total Gross Internal Area (GIA) of 54.9 sqm (application 2016/0464)). The **highest amount agreed to be paid is £197,346** (for 4 additional dwellings in Dittons with a total GIA of 860 sqm (application 2015/4561)).
11. Examples of the amount of affordable housing contributions being agreed under Policy CS21 are set out in Table 1. Those presented have been selected as they show that affordable housing contributions are being agreed across a range of sites e.g. from across the Borough's settlement areas; providing different numbers of gross and net units; and providing varying total Gross Internal Areas (GIAs).

Application No.	Settlement Area	Gross Units	Net Units	Total GIA* (Sqm)	Affordable Housing Contribution**
2015/4561	Dittons	4	4	860	£197,346
2016/0515	Weybridge	3	2	767	£158,890
2016/2033	Claygate	2	2	394	£108,461
2015/3936	Esher	8	7	567	£29,710
2016/0817	Molesey	1	1	153	£43,962
2016/1250	Cobham & Oxshott	1	1	133	£22,506

* Gross Internal Area (GIA)

** These figures have been rounded up to the next whole number

Table 1: Selected Affordable Housing Contributions required and agreed under Policy CS21 (20/05/2016 – 25/11/2016)

Appeal Decisions

12. Since the changes to PPG and up to 25 November 2016, the Planning Inspectorate has issued 9 planning decisions where affordable housing issues were considered as part of the appeal process. Of the 9 planning decisions issued, 6 have been allowed and 3 dismissed. The details of these and how the issue of affordable housing was considered by the Council and the Planning Inspectorate is detailed in Appendix 1 (Appeals Allowed) and 2 (Appeals Dismissed).
13. In summary, for 2 applications allowed on appeal the Council had already agreed to waive the affordable housing contribution in full as, following a financial viability assessment and independent verification, it was agreed to be disproportionate and that the payment would render the developments unviable. In 1 instance the applicant refused to pay a financial contribution and had submitted a viability assessment. However, this had not been independently assessed at the time the application was determined. For the remaining 3 applications, all had agreed to pay a contribution towards the provision of affordable housing in accordance with Policy CS21 at the time the application was determined by the Council. In all 3 cases this had been agreed via a signed unilateral undertaking and as such, the applications were refused on other grounds. Nevertheless, when the appeals were heard the issue of affordability was raised and in all 3 cases the Planning Inspectors considered the payment no longer appropriate. This was despite issues of viability not previously being raised by the applicant, a signed unilateral undertaking in place, and no additional evidence submitted during the appeal processes stating why the payment was now considered to be unviable and disproportionate.
14. In the 3 cases where the Inspectors considered the payments were no longer appropriate, the main reason given was that the PPG was the clearest and most recent expression of national planning policy which states that affordable housing contributions from small scale development should not be sought.

Limited or no reference was made to the Council's Statement (June 2016) as a material consideration and how this had been balanced against the weight given to the WMS and PPG.

15. With these decisions in mind, the Council wrote to the Planning Inspectorate on 5 September 2016, outlining its concern that Planning Inspectors may not be giving full weight to the Council's local circumstances evidence. It was requested that the Planning Inspectorate acknowledge the Council's Statement and give weight in the determination of a number of appeals awaiting consideration. The advice received from the Planning Inspectorate was to ensure that the Council's Statement was submitted as part of the information / evidence relating to every appeal lodged.
16. The 3 applications dismissed by the Planning Inspectorate insofar as they relate to the provision of affordable housing are set out in Appendix 2. In summary, the Planning Inspectors in these decisions carefully considered the issue and the weight to be applied to both national and local policy. The general consensus in these decisions is set out below:
 - The effect of the national policy in the WMS is that it would normally be inappropriate to require any affordable housing below the thresholds stated. Nevertheless, whilst there is a presumption that a policy such as a WMS should be followed, especially as it postdates the Core Strategy, it is also important to acknowledge that a policy that is relevant to the matter in hand should not be applied rigidly or exclusively when material considerations may indicate an exception may be necessary.
 - The view of the Council that it is for the decision taker to weigh any conflict between relevant policies in light of material considerations, including local circumstances, is agreed.
 - Whilst the WMS carries considerable weight, it does not necessarily outweigh the development plan given the acute and substantial need for affordable housing in the Borough and the importance of delivery through small sites towards this.
 - There is a lack of substantive evidence being submitted by the Appellants' showing that the application of Policy CS21 is placing an unreasonable or disproportionate burden on developers of small-scale schemes. Moreover, the appellants have not provided anything that leads to the conclusion that viability is an issue.

Other Cases

17. Two other Local Planning Authorities have also been successful at appeal in their continuation to consider Local Plan policies that require affordable housing contributions on sites of 10 or less dwellings. In each case the Planning Inspector has given greater weight to the Local Plan than to the Government's WMS and PPG based on local circumstances.
18. In September 2016 a Planning Inspector dismissed an appeal for the development of 8 units in Oakington, Cambridgeshire (APP/W0530/W/16/4142834). In regards to the provision of affordable housing, South Cambridgeshire District Council had argued that the application failed to comply with its Development Plan as the provision of 40% of units as affordable housing had not been secured via a signed legal agreement. In determining the application the Planning Inspector stated in regards to affordable housing:
 - That the WMS needed to be addressed alongside local policy.
 - There was local evidence of substantial affordable housing need which he attached significant weight.
 - The Development Plan was compatible with the NPPF in that it acknowledges development viability considerations in decision taking and did not impose a level of obligation that would prevent development coming forwards.
 - The applicant did not challenge the Council's viability appraisal, and that no evidence had been presented by the applicant that would suggest the development was unviable.
19. The second appeal decision related to a development scheme in Teddington, Richmond upon Thames (APP/L5810/W/16/3151789). Appealed on non-determination within the prescribed period, the applicants during the appeal process agreed to pay a financial contribution towards the provision of affordable housing. The issue was nevertheless, considered by the Planning Inspector. In determining the application the Planning Inspector stated in regards to affordable housing:
 - The Council has provided evidence that small sites make a significant contribution to housing supply and that the completion rate from larger sites is low. Therefore, the Council is reliant on the contribution of small sites to meet local affordable housing need. The Council has also identified a large deficit in affordable homes.

- Great weight was given to the WMS and PPG however, it does not outweigh the significant and substantial weight attached to the local evidence of affordable housing need.
- The contribution is necessary in the interest of the Council's housing strategy.
- The applicant did not challenge the Council's evidence and no evidence was presented that suggest that such a contribution would render the proposed development unviable.

Summary

20. Over the last 6 months the Council's continuation to balance national and local planning policy in the determination of planning applications and to request the provision of an affordable housing contribution where appropriate, has been largely successful. Of the 36 planning applications submitted where the Council would require a financial contribution towards affordable housing, planning permission has been granted for 25 of these development schemes. Of those development schemes granted permission, 24 had signed unilateral undertaking in place agreeing to make a contribution towards affordable housing. In accordance with Policy CS21 the Council waived a financial contribution in 1 instance on the grounds of viability. **From the 24 applications, £1.72m towards the provision of affordable housing has been agreed to be paid.**
21. The Council's approach has also been largely successful at appeal. Whilst some earlier decisions were allowed by the Planning Inspectorate, in two instances the Council had already agreed to waive the affordable housing contribution due to issues of viability. Those appeals allowed against the Council's approach and decision were on the basis that the Planning Inspectors considered the PPG as the clearest and most recent expression of national planning policy which states that affordable housing contributions from small scale developments should not be sought. Limited or no reference was made to the Council's Statement (June 2016) as a material consideration and how this had been balanced against the weight given to the WMS and PPG.
22. More recent planning decisions where the Planning Inspectorate has agreed with the Council's approach and the appeals dismissed, show that the effect of national policy in the WMS is that it would normally be inappropriate to require any affordable housing contribution below the threshold stated. Nevertheless, the decisions show that whilst there is a presumption that a policy such as a WMS should be followed, especially as it postdates the Core Strategy, it is also important to acknowledge that a policy that is relevant to the matter in hand should not be applied rigidly or exclusively when material considerations may indicate an exception may be necessary. The Council's view that it is for the

decision taker to weigh any conflict between relevant policies in light of material considerations, including local circumstances, is therefore correct.

23. On the basis of the above and the evidence set out in the Council's Statement (June 2016), the Council will continue with its approach to apply Policy CS21 in the decision making process where relevant. The Council has provided clear evidence of the acute need for affordable housing whereas, little evidence has been submitted by applicants suggesting that Policy CS21 is having a disproportionate affect on small schemes. Where evidence has been submitted the Council has negotiated the amount to be paid in accordance with Policy CS21.

Appendix 1 – Planning Decision issued by the Planning Inspectorate (Allowed)

The table below sets out appeal decisions received up until 25th November 2016

Application No.	Address	Settlement Area	Commentary
2015/0589 2015/2032 2015/3384	April Cottage Queens Road	Weybridge	<p>The Council determined the first application (2015/0589) at April Cottage in May 2015. At the time of determination the Government's WMS laid before the House of Commons on 28 November 2014 was in force. This prevented the Council from requesting affordable housing contributions on sites of 10 units or less, and which have a maximum combined gross floorspace of no more than 1000 sqm. The development scheme proposed 6 gross units (5 net) with a combined gross floorspace of 643 sqm. The lack of affordable housing provision was not therefore an issue at the time and did not form part of the Council's reason for refusal issued on 21 May 2015. An appeal was lodged on 29 July 2015.</p> <p>On 22 May 2016 the Council received a further scheme on the site (2015/2032) proposing the development of 6 gross units (5 net) which sought to overcome the reasons for refusal on the first application. However, this application was also refused and the decision issued on 17 July 2015. Again, this was during the period when the Council's affordable housing policy was not being applied on sites of 10 or less units as a result of the Government's WMS. The applicants lodged a second appeal (20 August 2015) that was considered and decided by the Planning Inspector alongside the first planning application.</p> <p>Following these two decisions by the Council, on 31 July 2015 the High Court handed down judgement in West Berkshire Council vs. SSCLG [2015]. The judgement found the policy expressed through the WMS to be unlawful and quashed the relevant parts of the PPG. Therefore when a third application (2015/3384) was submitted on 10 September 2015 proposing the development of 9 gross units (8 net), the Council's affordable housing policy would have applied. In this instance the Council would require the provision of affordable housing on-site; 30% of the total number of gross units proposed. This was however, considered to be unviable and following the submission of a viability assessment that was independently verified, a financial contribution of £95,000 was agreed.</p> <p>An appeal relating to the third application was however lodged with the Planning Inspectorate against the failure of the Council to give notice of a decision within the prescribed period of</p>

time. The appeal was lodged on 18 January 2016 and considered by a Planning Inspector alongside the proceeding two applications. During the appeal process, the Government successfully challenged the decision of the High Court handed down on 31 July 2015, with the Court of Appeal reversing the High Court order on 11 May 2016. The Government promptly amended the PPG on 19 May 2016.

The issue of affordable housing therefore became an issue during the appeals process in regards to all three planning applications. This followed the Council's Statement (June 2016) setting out its intended approach to balancing national and local planning policies, stating that on a case by case basis the Council would consider whether local circumstances outweighed the Government's WMS and changed to PPG.

In response, the applicant submitted a financial viability assessment stating that an affordable housing contribution from either of the first two development schemes (2015/0589 & 2015/2032) would render the proposals unviable. Following independent assessment, this position was verified and it was agreed by the Council that a financial contribution towards the provision of affordable housing should not be required as the contributions would be disproportionate. This approach was in accordance with Policy CS21.

Nevertheless, the Council argued that the £95,000 agreed financial contribution towards the provision of affordable housing relating to the third scheme (2015/3384) should stand. This was in light of the viability of the scheme having been independently assessed and found not to be disproportionate. The Council's Statement (June 2016) was submitted to the Planning Inspectorate.

On 7 July 2016 the Planning Inspectorate issued their decision, allowing all three planning applications. In regards to the third application and the provision of affordable housing, the Planning Inspector made the following statements:

47. The Planning Obligation dated 21 April 2016 which relates to the Appeal C application does provide for a contribution of £95,000 towards affordable housing which the Council accepts as appropriate. The Council has set out evidence explaining how smaller sites (in this context of 10 dwellings or fewer) have made a significant contribution to the provision of affordable housing in recent years. It also highlights affordability issues in the Council area.

			<p>48. However, the Written Ministerial Statement (the WMS) of 28 November 2014 and the national Planning Practice Guidance (the PPG) make clear that affordable housing and tariff style contributions should not be sought from schemes of 10 dwellings and fewer, or where the floorspace would be 1,000 sqm or less in locations which are not designated as referred to in the PPG. The appeal site does not lie in such a designated area.</p> <p>49. Policy CS21 has the weight of being a development plan policy and by not making a contribution towards affordable housing the proposal would be contrary to this part of the development plan. However, as the proposal is below the thresholds set in the WMS and PPG these are material considerations which outweigh this conflict.</p> <p>50. I therefore find a contribution towards affordable housing is not necessary to make scheme acceptable and consequently should not be sought in line with the advice in paragraph 204 of the Framework and the requirements of the CIL Regulations.</p>
2015/3430 & 2016/0380	53 and 53a The Furrows	Walton-on-Thames	<p>Submitted on 15 September 2015, the first application (2015/3430) proposed the provision of 8 gross units (4 net). Under Policy CS21 this would require the provision of affordable housing on-site at 30% of the gross number of units. The applicant agreed in the form of a unilateral undertaking to the provision of 2 affordable units on-site and a financial contribution of £68,983.45. Nevertheless, the application was subsequently refused planning permission on 12 January 2016 on two reasons unrelated to Policy CS21.</p> <p>An appeal was lodged on 4 May 2016 against the Council's decision. Whilst not a reason for refusal, the appeal inspector made comments on the provision of affordable housing as during the process the Government has been successful at the Court of Appeal and the WMS and PPG amendments were re-introduced as part of the decision-making process as a material consideration. On this issue the Planning Inspector stated:</p> <p>21. I note that the provision of a planning obligation to deliver affordable housing is not in dispute, that a unilateral undertaking has been submitted and that this would deliver two on site affordable homes and a financial contribution of £86,983.45 towards off site affordable housing provision. Nevertheless, given my findings on the main issue it is not necessary for me to consider this matter further, including any implications of the relevant Written Ministerial Statement and whether the planning obligation sought by the Council would be consistent with Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010.</p>

		<p>The appeal was subsequently dismissed on 22 July 2016.</p> <p>A second application (2016/0380) was submitted to the Council on 3 February 2016. The application proposed the provision of 6 gross units (4 net). Under Policy CS21 this would require the provision of affordable housing on-site at 30% of the gross number of units.</p> <p>Despite the previous application, although slightly different, agreeing to the provision of 2 affordable units on-site and a financial contribution of £86,983.45, when the second application was determined by the Council no affordable housing was proposed on-site, nor had a financial contribution been put forward. Whilst a viability assessment had been submitted stating that the provision of affordable housing would render the scheme unviable this had not been independently verified at the cost of the applicant as required by the Council's Developer Contributions SPD. As such, planning permission was refused on 20 April 2016 in accordance with Policy CS21. There was one other reason for refusal.</p> <p>An appeal was lodged with the Planning Inspectorate on 16 June 2016. The Council's Statement (June 2016) was submitted to the Planning Inspectorate.</p> <p>On 31 August 2016 the Planning Inspectorate issued their decision, allowing the planning applications. In regards to the provision of affordable housing, the Planning Inspector made the following statements:</p> <p>14. The Council argue that a contribution should be made to support the provision of off-site affordable housing. The requirement for such a contribution arises from Policy CS21 of the CS. No contribution has been offered by the appellant.</p> <p>15. However, following the Court of Appeal judgement dated 11 May 2016¹, the Written Ministerial Statement of 28 November 2014 (WMS) and subsequent alterations to the Planning Practice Guidance (PPG) on planning obligations for affordable housing and social infrastructure contributions have been reinstated. The PPG states that such contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1000m². This applies to the appeal scheme.</p> <p>16. The Council has confirmed that despite the WMS it still intends to apply Policy CS21. Whilst I accept the development plan should be the starting point, the PPG is the clearest</p>
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			and most recent expression of national planning policy and states that affordable housing contributions from small scale developments should not be sought. Accordingly, I conclude that an affordable housing contribution is not required.
2015/3014	Touchwood 9 Broom Close	Esher	<p>On 5 August 2015 a planning application was submitted on this site for the provision of four flats. In accordance with Policy CS21 a signed unilateral undertaking towards the provision of affordable housing was provided. This was for the sum of £194,554,31. The application was refused by the Council on 2 February 2016 for reasons unrelated to the provision of affordable housing. The Council's decision was subsequently appealed on 14 June 2016.</p> <p>In light of Government successfully challenging the High Court's decision to quash its WMS and amendments to PPG in May 2016, the issue of affordable housing was reconsidered during the appeal process. No evidence was submitted stating why the contribution would be disproportionate was submitted. Nevertheless, on this issue the Planning Inspectorate stated:</p> <p>19. A signed and dated Unilateral Undertaking has been submitted with the appeal documentation which makes provision for a payment to the Council to provide off-site affordable housing in accordance with Policy CS21 of the CS. However, after the Council issued its decision, the Written Ministerial Statement of 28 November 2014 (the WMS) and subsequent alterations to the Planning Practice Guidance (the PPG) on planning obligations for affordable housing and social infrastructure contributions was reinstated. The PPG now states that such contributions should not be sought from development of 10 units or less and which have a maximum combined gross floorspace of no more than 1000m². This applies to the appeal scheme. As this is the most up to date expression of national planning policy, I concur with the Appellant that the development should not be liable for an affordable housing contribution or tariff-style planning obligations.</p> <p>The Inspector allowed the appeal granting planning permission on 8 August 2016.</p>
2015/4401	Land to the Rear of 4 and 4A Castlevew Road	Weybridge	<p>On 8 December 2015 a planning application was submitted on this site for the provision of 1 additional unit. In accordance with Policy CS21 a signed unilateral undertaking towards the provision of affordable housing was provided. This was for the sum of £22,450.20. The application was refused on 8 March 2016 for reasons unrelated to the provision of affordable housing. The Council's decision was subsequently appealed on 22 September 2016.</p> <p>In light of Government successfully challenging the High Court's decision to quash its WMS</p>

		<p>and amendments to PPG in May 2016, the issue of affordable housing was reconsidered during the appeal process. No evidence was submitted stating why the contribution would be disproportionate other than stating the Government's position. Nevertheless, on this issue the Planning Inspectorate stated:</p> <p>14. The appellant has submitted a signed and dated Unilateral Undertaking to provide a financial contribution to off-site affordable housing in accord with Policy CS21 of the CS. He has however contested the need for such a payment. The Written Ministerial Statement of 28 November 2014 (the WMS) and subsequent alterations to the Planning Practice Guidance (the PPG) on planning obligations for affordable housing and social infrastructure contributions state that such contributions should not be sought from development of 10 units or less and which have a maximum combined gross floor space of no more than 1000m². This applies to the appeal scheme.</p> <p>15. The Council has confirmed that despite the WMS it intends to continue to apply Policy CS21, to which it accords greater weight in the light of local circumstances, and in particular the exceptionally high median house prices in Weybridge. I accept that the development plan should be the starting point in decision making, and have had regard to the appeal decision (Ref; App/K3605/W/16/3146699) which has been put to me by the Council. However, I have also had regard to the other evidence put before me; in particular that relating to the Council's housing land supply which is based on a Strategic Housing Market Assessment which pre-dates the Framework and on figures derived from the abolished Regional Spatial Strategy.</p> <p>16. As a consequence, whilst the development plan carries considerable weight, I do not consider that in this instance it outweighs the WMS and PPG which are the clearest and most up-to-date expressions of national planning policy. I conclude therefore that this justifies a decision being made other than in accordance with Policy CS21 of the CS, and that an affordable housing contribution is not required.</p> <p>The Inspector allowed the appeal granting planning permission on 22 September 2016.</p>
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Appendix 2 - Planning Decision issued by the Planning Inspectorate (Dismissed)

The table below sets out appeal decisions received up until 25th November 2016

Application No.	Address	Settlement Area	Commentary
2016/0813	Charters, Cavendish Road	Weybridge	<p>Submitted on 9 March 2016, the application sought planning permission for 4 gross units (3 net). Following consideration by the Council, the application was refused in the absence of a legal agreement to secure the necessary affordable housing provisions in accordance with Policy CS21. There was one other reason for refusal.</p> <p>An appeal was lodged with the Planning Inspectorate on 8 September 2016. In the Appellant's Statement of Case, concluding argument in regard to the requirement for an affordable housing contribution was that the provision would place a disproportionate burden on the appellant as a small scale developer, and directly conflicts with the WMS' aim to <i>"increase house building"</i> and <i>"unlock small scale developments."</i></p> <p>As part of his decision making process, the Planning Inspector carefully considered and balanced with the WMS and PPG, the Council's Statement (June 2016). In concluding his considerations the Planning Inspector stated:</p> <p>15. I have no substantive evidence before me to suggest that the application of Policy CS21 is placing an unreasonable or disproportionate burden on developers of small-scale schemes. Moreover, the appellant has not provided anything that leads me to conclude that viability is an issue in this case.</p> <p>16. To conclude on this main issue, given the acute and pressing need for affordable housing in the Borough and the important contribution of small-scale schemes in its delivery, I do not consider that the WMS outweighs the development plan in this instance. I consider the affordable housing contribution sought satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 (the CIL Regulations) and have determined the appeal in accordance with the development plan. Consequently, as there is no executed planning obligation before me that would make adequate provision for affordable housing, the proposal thereby runs counter to Policy CS21 and the Council's Developer Contributions Supplementary Planning Document (2012) (SPD).</p>

			<p>17. My findings, above, are consistent with the Inspector's decision in relation to an appeal for a proposal at Claygate, also within Elmbridge Borough. It is important to note that this decision post-dates the legal opinions of both parties submitted in relation to the current appeal and is a material consideration to which I attach substantial weight.</p> <p>The appeal and case for costs was dismissed on 22 November 2016.</p>
2015/3640	Land at 26 The Avenue	Claygate	<p>Submitted on 2 October 2015, the application sought planning permission for 1 net unit with a Gross Internal Area (GIA) of 98 sqm. Following consideration by the Council, the application was refused in the absence of a legal agreement to secure the necessary affordable housing provisions in accordance with Policy CS21. There was one other reason for refusal.</p> <p>An appeal was lodged with the Planning Inspectorate on 4 May 2016. In the Appellant's Statement of Case, it was stated that the applicant was willing to enter into the legal agreement for the required financial contributions. However, this was later withdrawn due to the WMS and amendments to the PPG. The Planning Inspector therefore carefully considered the issue and the weight to be applied to both national and local policy. In concluding his considerations the Planning Inspector stated:</p> <p>8. The effect of the national policy in the WMS is that it would normally be inappropriate to require any affordable housing below the thresholds stated. Nevertheless, whilst there is a presumption that a policy such as a WMS should be followed, especially as it postdates the CS, it is also important to acknowledge that a policy that is relevant to the matter in hand should not be applied rigidly or exclusively when material considerations may indicate an exception may be necessary. I therefore share the view of the Council that it is for the decision taker to weigh any conflict between relevant policies in light of material considerations, including local circumstances.</p> <p>13. As a consequence, 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 delivery through small sites towards this.</p> <p>14. Consequently, on the basis of the evidence before me, it appears that the need for the</p>

			<p>contribution sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Regulations 2010. Accordingly, the proposal should be determined in line with the development plan. Whilst the developer initially indicated a willingness to provide the financial contribution towards affordable housing through a planning obligation, this offer has been subsequently withdrawn and thus no obligation is before me.</p> <p>15. As such, the proposal fails to adhere to Policy CS21. I therefore conclude that in the absence of a planning obligation the proposal would not make adequate provision for affordable housing contrary to Policy CS21 of the CS, a policy I have already found to be consistent with the Framework.</p> <p>The appeal was dismissed on 12 August 2016.</p>
2016/0122	29 Burwood Park Road	Hersham	<p>Submitted on 13 January 2016, the application sought planning permission for 4 gross units (3 net). A signed unilateral undertaking was submitted and accepted by the Council for the provision of the required contribution. The application was however, refused for on issues relating to design.</p> <p>An appeal was lodged with the Planning Inspectorate on 8 September 2016. Whilst not a reason for refusal, the Planning Inspector had regard to the WMS and changes to PPG and considered whether an obligation remained necessary. The Planning Inspector therefore carefully considered the issue and the weight to be applied to both national and local policy. In concluding his considerations the Planning Inspector stated:</p> <p>21. ... Therefore appears to me that there is a specific and acute problem to address in Elmbridge with regard to the availability of affordable housing and the delivery of at least 1150 such homes by 2026.</p> <p>22. ... This approach accords with Framework paragraph 205, which states that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.</p> <p>23. Given the acute and pressing need for affordable housing in the Borough and the</p>

			<p>important contribution of small-scale schemes in its delivery, I do not consider that the WMS outweighs the development plan in this instance.</p> <p>25. Having been given the opportunity to comment on the need for the obligation in light of the WMS and PPG, the appellant has not sought to contest the Council's evidence. The affordable housing contribution that the UU would secure therefore constitutes a benefit of the appeal scheme that I have weighed in the overall planning balance.</p> <p>The appeal was dismissed on other grounds on 25 November 2016.</p>
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