

Statement on the Government's National Planning Policy Framework (NPPF) (2018) – Affordable Housing Provision on Small Sites

November 2018

1 Introduction

- 1.1 On 24 July 2018, the Government published its revised National Planning Policy Framework (NPPF). The NPPF sets out the Government's planning policies for England and how these should be applied both for plan-making and decision-taking. In terms of decision-taking i.e. in the consideration of planning applications, the NPPF is a material consideration for which appropriate weight should be applied.
- 1.2 In regard to affordable housing, detailed policies are set out in Chapter 5: Delivering a sufficient supply of homes. The focus of this Statement is paragraph 63 of the NPPF which states that the provision of affordable housing should ***'not be sought for residential developments that are not major development, other than in designated rural areas'***.
- 1.3 The publication of the NPPF introduces a conflict with the Council's approach to affordable housing provision as set out in Policy CS21 'Affordable Housing' of the adopted Elmbridge Local Plan: Core Strategy (July 2011).
- 1.4 The purpose of this Statement is therefore to outline the Council's position on the NPPF and how it intends to take forward decisions where there is a conflict between local and national policy. This Statement does not introduce new policy.
- 1.5 This Statement was endorsed and agreed for publication on 12 October 2018, by the Portfolio Holder for Planning Services, Councillor James Browne on behalf of the Council.

2 Policy Context

- 2.1 Paragraph 63 of the NPPF states that the provision of affordable housing should not be sought for residential developments that are not major development, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). Elmbridge Borough is not a designated rural area and major development sites are defined in the NPPF as development of 10 or more homes, or if the site has an area of 0.5 hectares or more.
- 2.2 The Government's approach to small sites and affordable housing provision follows that set out in its 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 (VBC).

- 2.3** The Council's approach to affordable housing provision is set out in Policy CS21 of the Local Plan: Core Strategy (July 2011). The policy establishes that the Council will seek contributions for affordable homes on all development where there is a net increase in residential units. The level of contributions varies according to the number of dwellings proposed. In regard to developments of fewer than 10 dwellings, the Council's approach, as set out in Policy CS21 is:
- A financial contribution equivalent to the cost of 20% of the gross number of dwellings on sites of 1-4 dwellings;
 - 20% of the gross number of dwellings on sites of 5 dwellings; and
 - 30% of the gross number of dwellings on sites of 6 – 14 dwellings.
- 2.4** In accordance with the NPPF, Policy CS21 makes clear that the application of the above thresholds and percentages is subject to financial viability. The policy is supported by the Council's Developer Contributions Supplementary Planning Document (SPD) (February 2012) which provides specific details of the negotiation process if non-viability can be robustly demonstrated.
- 2.5** Forming part of the Core Strategy, the drafting of Policy CS21 has been carefully considered by Officers and has been subject to close and extensive Councillor involvement; various rounds of public consultation; and considered by a Planning Inspector at the Examination in Public (EiP) of the Local Plan: Core Strategy. In addition, the Policy is underpinned by a Viability Study. The Developer Contributions SPD was also prepared and adopted following careful consideration of the evidence base and having been subject to close and extensive Councillor involvement, and public consultation including discussions with the development industry.

3 Consideration of the NPPF

- 3.1** As set out in Section 38(6) of the Planning and Compulsory Act 2004¹, the starting point for any decision is the Development Plan unless any material consideration(s) indicate otherwise. This point is acknowledged in paragraph 2 of the NPPF as a matter of planning law. Therefore, whilst the NPPF is clear in regard to the Government's intentions on planning obligations in relation to small sites, the weight to attach to a policy within the Development Plan and to other material considerations, in a given set of circumstances, is a matter of discretion for the decision taker.
- 3.2** In addition, whilst new national policy may affect the weight to which to attach to any conflict between national and local policy it cannot remove that conflict. As such, the conflict between Policy CS21 and the NPPF still requires the decision taker to assess the weight it attaches to both sides of that conflict, as well as other material considerations. Ultimately it is for the Local Planning Authority, in the first instance to decide on each relevant application whether there are sufficient local circumstances to allow the implementation of Policy CS21. Should the Council's decision be appealed, it then becomes that decision of the Planning Inspectorate. The local circumstances that the Council considers relevant to Elmbridge Borough are set out below.

¹ <http://www.legislation.gov.uk/ukpga/2004/5/section/38>

4 Affordable Housing Need

- 4.1** The Council's latest assessment of housing need is set out in the Kingston & North-East Surrey Strategic Housing Market Assessment (SHMA) (2016)². The SHMA identifies that the annual affordable housing need in Elmbridge Borough is for 458 gross dwellings. Consisting mostly of concealed and newly forming households unable to buy on the open market, the net annual need for affordable homes (taking account of potential supply e.g. new builds and re-lets) is for 332 dwellings per annum (6,640 net units across a 20-year period up to 2035).
- 4.2** Putting the level of affordable housing need into context, over the last seven monitoring years (2011/12 – 2017/18) 1,848 additional homes (both market and affordable) have been added to the housing stock (on average 264 per annum)³. Therefore, to meet the affordable housing need of 332 dwellings per annum (2,324 dwellings over a seven-year period), the entirety of all new residential development that has occurred per annum since 2011/12 would need to be affordable plus an additional 68 units per annum⁴.
- 4.3** The challenge to provide the required level of affordable housing within the Borough is also highlighted when compared to the percentage of the housing stock that is social rented (10%) and shared ownership (0.7%) and affordable housing completions. The Council's latest monitoring information (at August 2018) shows that in the last reporting year (2017/18), 28 new affordable housing units were completed; a 92% shortfall against the annualised need.
- 4.4** In addition, the Council considers the Government's Standardised Methodology for calculating housing need⁵ as an indicator of affordable housing need within the Borough. The associated data table identifies the annual housing need in Elmbridge Borough as 612 dwellings between 2018/19 and 2028/29. Based on household formation rates within the Borough, the housing need is for 436 dwellings per annum over the 10-year period. However, in accordance with the proposed methodology and the Government's aim of increasing affordable housing provision, this is significantly increased by 747 dwellings per annum based on affordability ratios prior to a 40% cap being placed on the uplift.

5 House Prices & Affordability Issue

- 5.1** The cost of housing in the UK and its impact on local people is a key concern for most local authorities, ranking higher than long-held concerns on health and social care services. Whilst high house prices and subsequent affordability issues are not particularly unique when it comes to the South-East; with most areas now becoming 'unaffordable' to the first-time buyer, the region is becoming increasingly polarised with house prices ranging from nearly £759,000 in Elmbridge Borough compared to just over £208,000 in Gosport .
- 5.2** Average (mean) house prices in 2016/17 in Elmbridge Borough are exceptionally high, amongst the highest in the country and, as prices continue to rise, are now 2.6 times that of

² Kingston & North-East Surrey Strategic Housing Market Assessment (SHMA) (2016) - <http://www.elmbridge.gov.uk/planning/sdps/evidence-and-supporting-docs/>

³ Elmbridge Authorities' Monitoring Report (AMR) 2016/17 plus know net completions for 2017/18 as at August 2018 -

⁴ This would be at a minimum on the basis that all new homes were provided by a registered provider. If any of our affordable housing need was to be met as a percentage of market developments, then housing delivery would need to be more than 332 dwellings per annum.

⁵ Ministry of Housing, Communities and Local Government – Planning for the right homes in the right places: consultation proposal <https://www.gov.uk/government/consultations/planning-for-the-right-homes-in-the-right-places-consultation-proposals>

the national average. In addition, when compared to the South East and Surrey averages (mean), house prices in Elmbridge Borough are now double the South East average and one and a half times that of the Surrey average. Continued increases in house prices in Elmbridge Borough show that the area is becoming increasingly expensive and at a quicker rate than most areas. For example, over the last decade (2007 – 2017), house prices have increased by 54% in comparison to the England average of 38%.

5.3 According to the National Housing Federation (HBF) (Home Truths 2017/18⁶), the average house price in Elmbridge Borough is now in the region of £759,000, making the Borough the most difficult place in the country outside of London to get a step on the property ladder where average wages, house prices and limited ability to save for a deposit collide to price out would-be homeowners. As set out in Table 1, Elmbridge Borough had the 9th highest average (mean) house price across the entirety of England in 2016/17, with the 8 other Local Authority areas all being in London.

Ranking	Local Authority	Region	Average (mean) house price	Mean annual earnings in 2017	Ratio of house prices to incomes	Income required for 80% mortgage (80% at 3.5x)
1	Kensington & Chelsea	London	£1,983,779	£70,496	28.1	£435,435
2	Westminster	London	£1,610,474	£55,266	29.1	£368,109
3	Camden	London	£1,027,351	£42,552	24.1	£234,823
4	Hammersmith & Fulham	London	£937,157	£43,347	21.6	£214,207
5	City of London	London	£933,478	£57,689	16.2	£213,366
6	Wandsworth	London	£788,501	£44,658	17.7	£180,229
7	Richmond upon Thames	London	£781,260	£47,970	16.3	£178,574
8	Islington	London	£760,315	£42,916	17.7	£173,786
9	Elmbridge	S. East	£759,635	£40,461	18.8	£173,631

Table 1: Highest average mean house price across the entirety of England in 2016/17 (HBF)

5.4 Whilst average annual mean incomes in Elmbridge in 2017 reached £40,461, which is well above the averages for Surrey (£37,248); the South East (£30,914); London (£35,610) and England (£28,444), due to exceptionally high house prices, the average household income required to obtain a mortgage at 80% was £173,361 (80% at 3.5x). The level of average income required is double that required in the South East and across England in general (£88,520 and £66,034 respectively) and between £39,676 and £55,362 higher than across Surrey (£117,999) and London (£133,685).

5.5 Whilst the annual average mean income of Borough residents is amongst the highest in England, the HBF has identified that due to high average mean house prices, the ratio of house prices to income (often referred to as the 'affordability' ratio) is 18.8. Again, this is on par with the levels experienced in London with, Elmbridge Borough having the 6th highest affordability ratio in England (in addition to those London Boroughs set out in Table 1, the London Borough of Hackney has an affordability ratio of 19.7).

5.6 In terms of accessing the property market in Elmbridge Borough, it is most likely that first time buyers will be looking towards house prices in the lowest quartile⁷ i.e. it is unlikely that they

⁶ National Housing Federation – Home Truths 2017/18 - <https://www.housing.org.uk/resource-library/home-truths/>

⁷ Lower quartile - when a series of values are arranged by order of magnitude the lower quartile (or 25th percentile) is the value that splits the lowest 25 per cent of the data from the highest 75 per cent.

would seek to purchase / obtain a mortgage on a detached property where the average price is over £1m. It is therefore important to also look at affordability issues in the Borough in the context of lowest quartile house prices and lowest quartile earnings. As shown in Table 2, data from the ONS⁸ identifies the lowest quartile house price in Elmbridge Borough was £342,000 in 2015 compared to the lowest quartile earnings of Elmbridge residents of £23,436. In terms of the lowest quartile house prices, Elmbridge Borough experienced the highest levels outside of London and 11th highest across England and Wales including London Boroughs.

5.7 In terms of the lowest quartile house / incomes affordability ratio for Elmbridge Borough (14.59) this is 16th highest experienced across England and Wales. Once again, the affordability ratio for Elmbridge Borough sits alongside those experienced in London Boroughs as well as St Albans (15.00) and South Bucks (14.90), both in the South East.

Ranking	Local Authority	Region	Lower quartile house price	Lower quartile annual earnings	Affordability Ratio
1	Kensington & Chelsea	London	£715,000	£22,482	31.80
2	City of London	London	£626,250	£35,860	17.46
3	Westminster	London	£579,340	£27,314	21.21
4	Hammersmith & Fulham	London	£499,999	£26,039	19.20
5	Camden	London	£475,000	£27,015	17.58
6	Islington	London	£425,000	£26,649	15.95
7	Wandsworth	London	£415,520	£23,537	17.65
8	Hackney	London	£350,000	£22,078	15.85
9	Lambeth	London	£350,000	£25,771	13.58
10	Southwark	London	£345,175	£26,494	13.03
11	Elmbridge	S. East	£342,000	£23,436	14.59

Table 2: Ratio of lower quartile house price to lower quartile annual earnings, England & Wales, 2015 (HBF)

5.8 From the data and information set out above, the Council is aware that for most first-time buyers and even those already established on the housing ladder, opportunities of finding an ‘affordable’ home within Elmbridge Borough are limited. In most local authority areas experiencing similar issues, the private rented market can offer a suitable alternative. However, as evidenced by the HBF, mean monthly private sector rents in 2016/17 are still beyond most individuals’ and households’ earnings. Data from the HBF shows mean monthly private sector rents in Elmbridge Borough are £1,810, the highest-level experienced outside of London. Again, these rates are higher than the Surrey and South East averages (£1,343 and £994 respectively) and are comparable to London Boroughs. Following the trend of mean house prices, Elmbridge Borough in 2016/17 experienced the 9th highest private rental levels in England behind those London Boroughs listed in Table 1.

5.9 The Valuation Office Agency (VOA)⁹ also provides data and information on the private rental market. Data published June 2018, identifies that the lowest quartile monthly rents for all properties recorded between 1 March 2017 and 31 April 2018, in Elmbridge Borough was

⁸ The Office for National Statistics (ONS) – Ratio of house price earnings to (lower quartile and median) by local authority district, England and Wales, 1997 to 2015 (Table 5) - <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/adhocs/006557ratioofhousepricetoearningslowerquartileandmedianbylocalauthoritydistrictenglandandwales1997to2015> (Released date: 19 January 2017)

⁹ Valuation Office Agency (VOA) – Official Statistics, Private rental market summary statistics – April 2017 to March 2018 - <https://www.gov.uk/government/statistics/private-rental-market-summary-statistics-april-2017-to-march-2018>

£1,000; falling within the top 10% of authorities within the highest lowest quartile monthly rents. Again, the lowest quartile monthly rents experienced in Elmbridge are on-par with London Boroughs (in particular Outer London) and similar to other South East areas on the edge of London e.g. Epsom & Ewell, Hertsmere and Three Rivers (See Figure 1).

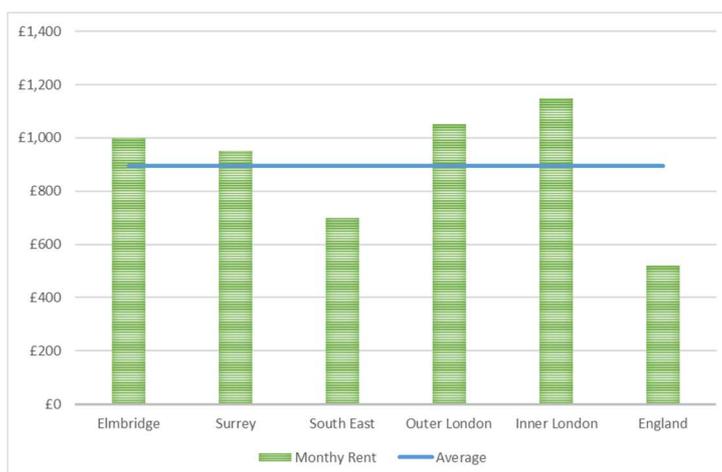


Figure 1: Comparisons of lowest quartile monthly rents for all properties recorded between 1 March 2017 and 31 April 2018 (VOA)¹⁰

5.10 As set out in Table 3, data from the VOA identifies that lowest quartile private rents have generally increased in Elmbridge Borough over the last 5 years (2013 – 2018). The rent for a ‘room’¹¹ seeing the largest percentage increase in monthly rent from £400 - £550 (a 38% increase). Besides the lowest quartile private rent for a 4+ bedroom unit, all property types have seen an increase in monthly cost between 2013 and 2018.

	Lowest Quartile Monthly Rents					
	2013 - 14 ¹²	2014 - 15 ¹³	2015 - 16 ¹⁴	2016 - 17 ¹⁵	2017 - 18 ¹⁶	% Change 2014 - 18
Room ¹⁷	£400	£550	£550	£485	£550	38%
Studio	£613	£600	£625	£675	£650	6%
1-bed	£775	£825	£850	£855	£855	10%
2-bed	£950	£1,000	£1,050	£1,050	£1,100	16%
3-bed	£1,250	£1,300	£1,377	£1,400	£1,395	12%
4+ bed	£2,340	£2,400	£2,400	£2,450	£2,300	-2%
All properties	£900	£883	£1,000	£1,000	£1,000	11%

Table 3 – Annual lowest quartile monthly rents for all property types in Elmbridge Borough between 2013 and 2018 (VOA)

¹⁰ The average depicted in Figure 1 is that of the areas shown within the chart

¹¹ VOA – definition of a ‘room’ - a non-self-contained single room with shared facilities. Includes bedsits, single rooms in a house or flat shared with other tenants, and single rooms rented from a resident landlord.

¹² For the period 1 April 2013 – 31 March 2014

¹³ For the period 1 October 2014 – 30 September 2015

¹⁴ For the period 1 October 2015 – 30 September 2016

¹⁵ For the period 1 April 2016 – 31 March 2017

¹⁶ For the period 1 April 2017 – 31 March 2018

6 The Importance of Small Sites

- 6.1** The Government continues to prioritise the delivery of new housing on brownfield sites. This approach is supported in the Council's Core Strategy and emerging Local Plan, and the vast majority of housing that has come forward in the Borough since the adoption of the Core Strategy has been on previously developed land. However, within Elmbridge Borough a significant proportion of the sites that are granted planning permission are very small in comparison to those found in more urban areas, and especially those London Boroughs facing similar affordability issues.
- 6.2** Between 1 August 2011 (when all relevant applications registered and determined after this date where required to be considered against Policy CS21) until 31 July 2018, 1,286 gross¹⁸ units have been granted planning permission on sites of fewer than 10 units and where there has been a net¹⁹ increase²⁰. As set out in Table 4, during the period 1 August 2011 – 31 July 2018, on average 46% of units approved were on schemes of 1 – 9 gross units; accounting for 1,286 new units. In some years (2011/12 and 2014/15) the proportion of total units approved that came from small sites was 100% with the median average²¹ across the monitoring period (2011 – 2018) at 67%.
- 6.3** Of further interest is that Table 4 also shows that during the period 1 August 2011 – 31 July 2018, 94% of planning applications granted planning permission were for developments of fewer than 10 gross units. During the monitoring period (2011 – 2018), this equated to 546 applications out of a total of 580.

Scheme size – proposed units	Fewer than 10 units (gross)		Applications granted planning permission with fewer than 10 gross units		10 units or more (gross)		Applications granted planning permission with 10 or more gross units		Total units (gross)	Total app.
	Year of approval	No. of units	% of total units	No. of app.	% of total app.	No. of units	% of total units	No. of app.		
2011/12 ²²	23	100%	13	100%	0	0%	0	0%	23	13
2012/13	100	67%	49	96%	52	33%	2	4%	150	51
2013/14	151	69%	65	94%	67	31%	4	6%	218	69
2014/15	181	100%	89	100%	0	0%	0	0%	181	89
2015/16	189	22%	85	89%	652	78%	10	11%	841	95
2016/17	285	67%	107	95%	142	33%	6	5%	427	113
2017/18	243	42%	94	91%	334	58%	9	9%	577	103
2018 ²³	114	31%	44	92%	250	69%	4	8%	364	48
Total	1,286	46%	546	94%	1,497	54%	35	6%	2,783	581

Table 4: Gross dwellings and number of applications granted planning permission by scheme size, 2011 – 2018.

¹⁸ Gross dwellings – is the total number of new units on a site not taking account of any dwellings demolished

¹⁹ Net dwellings – refers to the number of new dwellings being created minus any existing dwellings lost through demolition for example

²⁰ Information taken from the Council's residential monitor.

²¹ Median average – is the "middle" value in the list of numbers when listed in numerical order from smallest to largest

²² Data is from the date of the implementation of Policy CS21 (1 August 2011) up to 31 March 2012

²³ Date is from 1 April 2018 up to 31 July 2018

- 6.4** The Council's monitoring information also shows that of the 581 applications registered and determined after 1 August 2011 up until 31 July 2018, 558 have a recorded site area. Of these, 525 development schemes were on sites of less than 0.50 hectares (96%). The average site size of all developments on less than 0.50 hectares being 0.11 hectares.

7 Planning Applications & Appeals

Planning Applications

- 7.1** The Council started to apply Policy CS21 to all relevant planning applications registered for determination from 1 August 2011. From this date up until 31 July 2018, 581 applications have been granted permission where Policy CS21 has been considered. Of these applications:
- 495 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;
 - 19 related to the provision of 5 gross units whereby Policy CS21 would require 20% of the gross number of dwellings on-site as affordable;
 - 40 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 any 'part units' would require an affordable housing contribution; and
 - 27 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.
- 7.2** Of the 581 planning applications, 545 development schemes (94%) applied to sites of fewer than 10 units – the Government's threshold for major developments. From these applications 61 affordable housing units have been provided on-site. Nevertheless, this is a reduction in the number of affordable housing units required on-site as, in accordance with Policy CS21, viability has been taken into account. Hence, on 16 development schemes the on-site requirement for affordable housing provision has been waived entirely (4 development schemes) or reduced (12 development schemes). On a further 3 development schemes affordable housing provision was not required due to the changes to PPG and WMS (see Section 8 for further details).
- 7.3** It is important to note however, that even on the 12 development schemes where the on-site affordable housing contribution was reduced, £1,233,687 was still collected as a financial contribution for either the payment of a 'part-unit' or in lieu of on-site provision.
- 7.4** Focusing on financial contributions and sites of 1-4 units, of the 495 development schemes granted permission:
- 65 development schemes related to Prior Notifications whereby the Council is unable to apply Policy CS21;
 - 2 development schemes applied Vacant Building Credit and thus in accordance with Government policy were not required to make a contribution towards affordable housing;
 - 56 development schemes were granted permission between 28 November 2014 and 31 July 2015 whereby due to the WMS the Council was unable to collect financial contributions from small sites²⁴;

²⁴ See Section 8 for further details

- 11 development schemes were granted permission on appeal whereby the Planning Inspectorate gave greater weight to the changes to PPG and WMS than Policy CS21²⁵;
- 5 development schemes were granted permission in error without securing a S106 agreement for affordable housing; and
- 1 development scheme was granted permission as part of a superseded application that had already commenced and paid the contribution towards affordable housing.

7.5 Discounting the above applications, the Council has determined 354 applications whereby Policy CS21 has been applied to sites of 1-4 gross units. Of these:

- 58 development schemes (16%) have had the affordable housing contribution waived due to financial viability. For 12 development schemes the amount that should have been payable is noted; totalling approximately £890,000;
- 32 development schemes (9%) have had the affordable housing contribution reduced due to financial viability. For 26 development schemes the amount that should have been payable is noted; totalling approximately £2.9 million. Instead however, approximately £780,000 has been committed (a reduction of approximately £2.1 million; 72%); and
- 264 development schemes (75%) have committed to pay the full amount of affordable housing contribution required. From these development schemes the amount of financial contributions that has been secured through S106 agreements is approximately £16.5 million²⁶.

7.6 Of the 264 applications having agreed to pay the affordable housing contribution in full in accordance with Policy CS21, the average amount agreed is £62,382. The lowest amount agreed to be paid is £5,638 (for 1 additional dwelling in Thames Ditton with a total Gross Internal Area (GIA) of 95 sqm (application 2016/4162)). The highest amount agreed to be paid is £260,481 (for 4 gross 2 net dwellings in East Molesey with a total GIA of 2,284 sqm (application 2015/2479)).

7.7 Examples of the amount of affordable housing contributions being agreed under Policy CS21 are set out in Table 5. 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	Total Affordable Housing Contribution
2016/2033	Claygate	2	2	352	£115,936.65
2017/3850	Cobham & Oxshott	4	3	152	£171,574.38
2015/4561	Dittons	4	4	860	£197,345.56
2016/0277	Esher	1	1	53	£29,680.21
2017/0160	Hersham	1	1	47	£24,937.87
2015/2479	Molesey	4	2	2284	£260,481.82
2017/0424	Walton on Thames	3	2	346	£79,473.10
2017/3269	Weybridge	1	1	60	£49,888.53

Table 5: Selected Affordable Housing Contributions required and agreed under Policy CS21

²⁵ See paragraphs 7.8 – 7.10 for further details

²⁶ This includes an element of late payment interest

Planning Appeals

- 7.8** Since the changes to PPG and up to 1 August 2018, the Planning Inspectorate has issued 58 planning decisions where affordable housing issues were considered as part of the appeal process. Of the 58 decisions issued, in 43 appeals (74%), Planning Inspectors have agreed with the Council's continued application of Policy CS21, whereas in 15 appeals (26%) the Planning Inspectors have given more weight to the Government's WMS and changes to PPG (now embedded in the revised NPPF). The details of these are set out in Appendix 1.
- 7.9** In the 15 appeals where Planning Inspectors considered affordable housing payments were no longer appropriate, the main reason given was that the PPG / WMS 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 previous Council Statements as a material consideration and how this had been balanced against the weight given to the WMS and PPG. Furthermore, these decisions were either made early on after the introduction of the WMS and PPG or, for a period, where Inspectors considered the Council's affordable housing policy carried less weight in light of the lack of 5 year housing land supply²⁷.
- 7.10** In the 43 appeals where Planning Inspectors have agreed with the Council's approach and determined that local circumstances and Policy CS21 carries more weight than the PPG and WMS, the general consensus in these decisions was as follows:
- 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 has been a lack of substantive evidence being submitted by appellants showing that the application of Policy CS21 is placing an unreasonable or disproportionate burden on developers of small-scale schemes. Moreover, appellants have not provided anything that leads to the conclusion that viability is an issue; and
 - Whilst the Council does not have a 5-year housing land supply, Policy CS21 is not a policy 'for the supply' of housing and is therefore not out of date. Furthermore, the Council needs to comply with both the Government's policy on delivering development on previously developed land and continue to deliver affordable units as required under paragraph 50 of the NPPF (2012).
 - It is also has been concluded that the affordable housing contribution sought satisfies the two tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 and paragraph 204 of the NPPF (2012).

²⁷ The Council's lack of 5 year housing land supply and implications in regard to Policy CS21 is set out in Section 12 of this Statement

8 The implications of the Government's PPG & WMS

8.1 During the period when the Government's Written Ministerial Statement (WMS) was first introduced (28 November 2014) until the 31 July 2015 when the High Court handed down judgement in *West Berkshire Council vs SSCLG* [2015], the Council was unable to seek contributions towards the provision of affordable housing through the provisions of Policy CS21 in regard to sites of less than 10 units. During this period, planning permission was granted on 61 development schemes²⁸ whereby Policy CS21 would have required:

- 56 development schemes to provide a financial contribution towards affordable housing equivalent to 20% provision on-site;
- 2 development schemes that would have required 20% of the total units as affordable; and
- 3 development schemes that would have required 30% of the total units as affordable and a contribution towards affordable housing from a 'part-unit'.

8.2 As a result of the WMS, the Council was unable to seek to collect approximately £3.57 million in financial contributions and require the provision of 6 affordable housing units on-site.

9 Viability

9.1 As set out in Section 2 of this Statement, a Viability Assessment was undertaken to support the drafting of Policy CS21. However, in accordance with Government policy and guidance the Council acknowledges the importance of ensuring that viability does not compromise sustainable development and that policy requirements, such as affordable housing and infrastructure needs, are set at a level that allows for the planned types of sites and development to be delivered.

9.2 As part of the new Local Plan the Council will be reviewing its Viability Assessment in light of potential development sites and infrastructure needs. However, to support the continued implementation of Policy CS21, the Council asked its consultants (DixonSearle Partnership) (DSP) to review the approach to seeking affordable housing contributions on sites of fewer than 10 units²⁹.

9.3 The outcome of this review was that the analysis of viability has been demonstrated that contributions to affordable housing from sites with fewer than 10 units are viable in principle alongside the Community Infrastructure Levy (CIL) rates.

10 Utilising Monies Collected

10.1 It is a key priority for the Council to increase the supply of affordable homes in Elmbridge Borough. Affordable housing contributions from small sites have enabled the Council to support the delivery of both new units and ensure the more effective provision of its existing stock and reducing under occupation, a key element of the NPPF.

²⁸ The 61 development schemes exclude a further two applications that were duplicates for the same sites

²⁹ Small Sites Affordability Housing Provision Policy CS21 Supporting Viability Report
<http://www.elmbridge.gov.uk/planning/local-plan/>

10.2 Financial contributions collected are held in the Council's Affordable Housing Enabling Fund. Table 6 summaries spend from the Enabling Fund and the associated outputs, both in terms of additional affordable housing supply and making better use of the existing housing stock in the eight years between April 2011 and March 2018. It shows that the Enabling Fund has directly contributed to the provision of 68 additional affordable homes (through a combination of new-build and acquisitions), whilst also supporting the better use of the existing social housing stock.

Scheme	Units delivered / under construction / released	Total spend from Enabling Fund (actuals)	Average contribution per unit from Enabling Fund
Intermediate affordable – acquisitions (Homeownership Assistance Scheme)	42	£1,523,973	£36,285
Rented affordable provision – acquisitions and new-build	26	£1,404,485	£54,019
Sub-total – additional supply	68	£2,928,458	£43,065
Making better use of affordable stock - Perfect Fit under-occupation scheme (social rent / affordable rent)	147 homes released	£519,00	£3,531
Total	215	£3,447,458	£16,035

Table 6: Summary of affordable housing delivery supported by financial contributions secured through Elmbridge Borough Council's planning policies (1 April 2011 to 31 March 2018)

10.3 In addition to monies already spent, the Council has also committed approximately £770,000 to support the continuation of both the Elmbridge Homeownership Assistance³⁰ and Perfect Fit³¹ schemes whilst also funding an increase in supported housing provision within the Borough.

10.4 Furthermore, at an Elmbridge Borough Council meeting on 21 February 2018, the Council agreed to establish a Council-owned housing company with the aim of building homes to meet the needs of residents. The creation of this housing company opens up new opportunities for affordable housing to be developed in the Borough. The company is initially focusing on developing Council-owned land and acquiring existing street properties. It is envisaged that the new company will start planning for development in 2018/19; taking ownership of around 15 homes.

10.5 Examples of the Council's recent work includes:

- 5 affordable homes being provided at Albemarle House in Thames Ditton having secured planning in January 2018 to convert the vacant office building to residential use. Works started in July 2018.

³⁰ Homeownership Assistance scheme – the Council supports Catalyst Housing to run the Elmbridge Homeownership Assistance Scheme, which gives aspiring homeowners and who are priced out of the market, a route to purchasing a home of their own. The scheme offers equity loans of up to £90,000 to qualifying households towards the cost of purchase. 39 households have been helped through this scheme since 2011 (as at March 2018)

³¹ Perfect Fit scheme – with Paragon Housing the Council launched the Perfect Fit scheme in 2012 to encourage tenants in homes larger than they needed to downsize, thereby freeing up much-needed larger homes for families in need. Support and incentives of up to £4,000 have resulted in just under 150 households downsizing (as at March 2018).

- 5 affordable homes being provided through the redevelopment of Weybridge Hall having secured planning permission in April 2018 to convert the hall to a cinema and the upper floors to residential use.

11 Five Year Housing Land Supply

- 11.1** Forming part of the Planning Inspectorates' justification for not requiring some development schemes to provide a contribution towards affordable housing (see paragraph 7.3) was the issue of the Council not being able to demonstrate a 5 year housing land supply when assessed against the Objectively Assessed Housing Need (OAHN), as set out in the Kingston & North East Surrey SHMA, and the Government's draft Standardised Methodology. Policy CS21 was thus deemed by some Planning Inspectors as out of date and subsequently the presumption in favour of sustainable development was applied. That is to say that there was a policy presumption in favour of the grant of planning permission.
- 11.2** However, these decisions were generally issued prior to / around the time of the Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Supreme Court Decision (10 May 2017) which determined the meaning of '*relevant policies for the supply of housing*'³². In summary, it was concluded that policies '*dealing only with the numbers and distribution of new housing*' and not policies '*dealing generally with the disposition or restriction of new development*' were relevant in the context of paragraphs 14 and 49 of the NPPF (2012).
- 11.3** In the case of the Elmbridge Local Plan only Policy CS2 'Housing Provision' was therefore determined as being out of date and hence the application of Policy CS21 continued to be applied where relevant, taking into account the weight to attach to a conflict with the policies of the Development Plan which affect the supply of housing, when performing that balance, in light of an overall shortfall in the supply of housing land. Again, the weight to be applied was determined by the decision-maker. In the Council's case this took into account:
- the degree of the housing shortfall;
 - the steps being taken to make up the shortfall;
 - the acknowledged constraints on meeting the OAN in Elmbridge Borough (e.g. Green Belt);
 - the important function of policy CS21 to meet paragraph 50 NPPF (2012); and
 - the local circumstances and evidence which justifies seeking contributions from schemes of 10 or fewer units notwithstanding the PPG and WMS.
- 11.4** In terms of 5 year housing land supply, the Council's position remains that, as required by paragraph 11 of the NPPF (2018), it is unable to identify sufficient housing land supply measured against both the OAHN as set out in the Kingston & North East Surrey SHMA and the Government's draft Standardised Methodology³³. As show in Figure 2 below, this means that '*the policies which are most important for determining the application are out-of-date*' and that the presumption in favour of sustainable development should be applied unless, in the stated restricted circumstances (points d(i) and d(ii)).

³² Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Supreme Court Decision (10 May 2017) <https://www.supremecourt.uk/cases/docs/uksc-2016-0076-judgment.pdf>

³³ The Council is also unlikely to meet the requirements of the Housing Delivery Test as required by the NPPF.

Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Figure 2: Abstract from paragraph 11 of the NPPF (2018)

- 11.5 Reference in paragraph 11 of the NPPF to *'policies which are most important for determining the applications'* effectively negates part of the Supreme Court's decision in Suffolk Coastal and brings into play arguments as to what policies are determinative for the application and whether they are out of date. Again this is for the consideration of the decision-maker.
- 11.6 The Council will consider this point on a case by case basis taking into account the bullet points noted in paragraph 11.3 alongside other relevant policies set out in the NPPF (see Section 12 below). If it is considered that Policy CS21 is a policy which is most important for determining an application and, in the absence of a 5-year housing land supply (and requirements of the Housing Delivery Test), the policy will be deemed out of date and subsequently the titled balance will be applied.

12 Other NPPF considerations

- 12.1 As set out in paragraph 3 of the NPPF, the Framework should be read as a whole (including its footnotes and annexes). In this context, the following NPPF policies are also relevant in regard to the Council's continued application Policy CS21 on a case by case basis:
- paragraph 59 of the NPPF which states that within the context of significantly boosting the supply of homes, *'it is important that a sufficient amount and variety of land can come forward where it is needed, **that the needs of groups with specific housing requirements are addressed** and that land with permission is developed without unnecessary delay'* (Council's emphasis).
 - paragraph 61 which states *'... the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing...'*
 - paragraph 62 which states *'where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be on-site unless a) off-site provision or an appropriate financial contribution in lieu can be robustly justified...'*
- 12.2 Furthermore, whilst relating to plan-making, paragraph 3 of the NPPF states that general reference to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, having regard to policy on plan-making in Chapter 3. In regards to developer contributions, chapter 3 of the NPPF (paragraph 43) states that a *'plan should set out the contributions expected from development'*. This should

include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan’.

- 12.3** As set out in Section 9 of this Statement, a review of the viability evidence demonstrates that the application of Policy CS21 remains a realistic approach and that the principle of the policy does not undermine the overall viability of individual development schemes or the deliverability of the plan.

13 The approach of other Local Planning Authorities

- 13.1** Other Local Planning Authorities also continue to consider on a case by case basis whether local circumstances exist within their area to justify the collection of affordable housing contributions on small sites. Two such authorities neighbour Elmbridge Borough, namely the London Borough of Richmond upon Thames and Epsom & Ewell Borough Council. Others further afield include South Cambridgeshire District Council, the New Forest District Council, and the London Boroughs of Camden and Islington. All London Boroughs referred to above feature in Table 1 alongside Elmbridge Borough.

14 Conclusion

- 14.1** Without the ability to collect affordable housing contributions on small sites the Council will limit its capacity to support the delivery of affordable units in the Borough whether through onsite provision or using affordable housing contributions that support the delivery of affordable housing by other means e.g. the Affordable Housing Enabling Fund.
- 14.2** Policy CS21 has clearly not negatively impacted on development coming forward on small sites. As outlined above, it is evident that such sites remain a significant source of new housing within the Borough. The Council has ensured that the contributions collected on small sites are not disproportionate through a viability review of its approach (October 2018) and via the use of viability assessments on all developments where applicants consider the contributions to make the development unviable. This enables the Council to reduce or waive any contribution on the basis of viability in accordance with local and national policy.
- 14.3** The Council needs to comply with both the Government’s policy on delivering development on previously developed land and continue to deliver affordable units as required under paragraphs 59, 61 and 62 of the NPPF. To achieve this, the Council must 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 CS21 or whether greater weight should be attached to the NPPF.
- 14.4** The Council will therefore continue to consider Policy CS21 Affordable Housing as part of the decision making process for any relevant application. Where applicants consider that the charge is disproportionate the Council will request that the relevant information setting out scheme viability is submitted for independent assessment as set out in our Developer Contributions SPD.
- 14.5** Applicants will also be encouraged to set out why the application of Policy CS21 is considered to be disproportionate in relation to the applicant’s circumstances. All relevant evidence will then be considered on a case by case basis and be used to assess the weight to be attached to local and national policies.

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Appendix 1 – Planning Appeal

Appeal decisions whereby the Planning Inspectorate has agreed with the Council's continuation to apply Policy CS21:

Information about the cases including copies of the appeal decision can be found via the planning application number links.

Planning Application Number	Address	Appeal Decision Date	Appeal Reference
2015/3640	26 The Avenue, Claygate, Esher, Surrey KT10 0RY	12/08/2016	APP/K3605/W/16/3146699
2016/0813	Charters, Cavendish Road, Weybridge, Surrey KT13 0JN	22/11/2016	APP/K3605/W/16/3156265
2016/0122	29 Burwood Park Road, Hersham, Walton-on-Thames KT12 5LH	25/11/2016	APP/K3605/W/16/3156943
2015/2589	3 Gordon Road, Claygate, Esher KT10 0PJ	05/12/2016	APP/K3605/W/16/3154395
2016/1709	Kings Yard, Kings Road, Long Ditton, Surbiton KT6 5JE	02/02/2017	APP/K3605/W/16/3159613
2016/0471	37 Southdown Road, Hersham KT12 4PP	03/02/2017	APP/K3605/W/16/3160775
2016/2871	Land at 72 Portmore Park Road, Weybridge KT13 8HG	21/04/2017	APP/K3605/W/16/3163555
2016/0992	15 Portsmouth Road, Thames Ditton, Surrey KT7 0SY	05/05/2017	APP/K3605/W/16/3160272
2016/2280	Claremont House, 34 Molesey Park Road, Hersham, Walton-on-Thames KT12 4RQ	30/05/2017	APP/K3605/W/17/3167461
2016/1555	Land to the rear of 47-49 Bridge Road, East Molesey KT8 9ER	13/06/2017	APP/K3605/W/16/3165031
2015/2176	Land to the rear of 255-259 Hersham Road, Hersham, Walton-on-Thames KT12 5PZ	16/06/2017	APP/K3605/W/16/3160470
2016/0781	38 Rosehill, Claygate, Esher KT10 0HL	16/06/2017	APP/K3605/W/16/3161055
2016/3204	13A Station Avenue, Walton-on-Thames KT12 1NF	12/07/2017	APP/K3605/W/17/3170237
2016/3374	Land to the side of 50 Primrose Road, Primrose Road, Hersham, Walton-on-Thames KT12 5JD	12/07/2017	APP/K3605/W/17/3167882
2016/1628	115 Thorkhill Road, Thames Ditton KT7 0UW	14/07/2017	APP/K3605/W/17/3168617
2015/2059	8 High Street, Walton-on-Thames, Surrey KT12 1DA	24/07/2017	APP/K3605/W/16/3163928
2016/2822	28-30 High Street, Weybridge KT13 8AB	01/08/2017	APP/K3605/W/17/3170332
2016/3250	Wessex, South Road, Weybridge KT13 9DZ	01/08/2017	APP/K3605/W/17/3174279
2016/3339	70 Baker Street, Weybridge KT13 8AL	04/08/2017	APP/K3605/W/17/3166743
2016/3783	Land north-west of 39 Lovelace Road, Long Ditton, Surbiton, Surrey, KT6 6NZ	17/08/2017	APP/K3605/W/17/3170775

2016/2576	Plot 4, Embercourt Road, Thames Ditton, Surrey KT7 0LQ	18/08/2017	APP/K3605/W/17/3167270
2016/3977	Car park site, rear of Bridge Road, East Molesey, Surrey KT8 9ER	18/08/2017	APP/K3605/W/17/3169210
2016/2364	Land to rear of 74 to 128 Speer Road, Thames Ditton KT7 0PP	31/08/2017	APP/K3605/W/17/3172080
2016/2678	20 Russet Close, Hersham, Walton-on-Thames KT12 4QJ	31/08/2017	APP/K3605/W/17/3174860
2016/2066	67 St Mary's Road, Long Ditton, Surbiton KT6 5HB	01/09/2017	APP/K3605/W/17/3170220
2016/3422	Prince of Wales, 11 Cross Road, Weybridge, Surrey, KT13 9NX	06/10/2017	APP/K3605/W/17/3167961
2017/0184	46 Molesey Park Road, West Molesey KT8 2JZ	13/12/2017	APP/K3605/W/17/3182479
2017/0554	The Wellington, 60 High Street, Walton-on-Thames KT12 1BY	12/12/2017	APP/K3605/W/17/3179698
2017/1565	28a Green Lane, Hersham, Walton-on-Thames, Surrey KT12 5HD	15/12/2017	APP/K3605/W/17/3180558
2017/0568	Childs Play Centre, Manor Road, Walton-on-Thames KT12 2PH	08/01/2018	APP/K3605/W/17/3179815
2016/3758	Beechcroft and Tall Timbers and land to the rear as shown on the Title Plan SY790622, Field Common Lane, Walton on Thames KT12 3QH	19/01/2018	APP/K3605/W/17/3171756
2017/0436	Rear of 1 Park Road, East Molesey KT8 9LD	31/01/2018	APP/K3605/W/17/3180413
2017/1328	45 Pelhams Walk, Esher, KT10 8QA	09/02/2018	APP/K3605/W/17/3188300
2016/3994	Land South of 15 Queens Drive, Thames Ditton KT7 0TJ	12/02/2018	APP/K3605/W/17/3184426
2017/1646	Land Adjacent to 20 Holstein Avenue, Weybridge KT13 8NX	14/02/2018	APP/K3605/W/17/3187232
2016/1195	20-22 Castleview Road, Weybridge KT13 9AB	19/02/2018	APP/K3605/W/17/3178538
2017/2101	8 West Grove, Hersham, Walton-on-Thames KT12 5NX	01/03/2018	APP/K3605/W/17/3187926
2017/0133	21 Castleview Road, Weybridge KT13 9AB	20/03/2018	APP/K3605/W/17/3181617
2017/1966	Land southwest of Arenella, Mountview Road, Claygate, Esher, Surrey KT10 0UD	24/05/2018	APP/K3605/W/18/3195774
2017/2574	15 Eaton Park Road, Cobham, Surrey KT11 2JJ	24/05/2018	APP/K3605/W/18/3192667
2017/2812	9 Princes Drive, Oxshott, Leatherhead, Surrey KT22 0UL	24/05/2018	APP/K3605/W/18/3193874
2017/2816	No.38 (Chenies) and No.41 (Chantry) Twinoaks, Cobham KT11 2QW	17/07/2018	APP/K3605/W/18/3197265
2017/2433	11 Oakfield Glade, Weybridge KT13 9DP	18/07/2018	APP/K3605/W/17/3188993

Appeal decisions where the Planning Inspectorate has given more weight to the Government's WMS and changes to PPG (now embedded in the NPPF):

Information about the cases including copies of the appeal decision can be found via the planning application number links.

Planning Application Number	Address	Appeal Decision Date	Appeal Reference & Link
2015/0589	April Cottage, Queens Road, Weybridge, Surrey KT13 0AU	07/07/2016	APP/K3605/W/15/3129629
2015/2032	April Cottage, Queens Road, Weybridge, Surrey KT13 0AU	07/07/2016	APP/K3605/W/15/3132227
2015/3384	April Cottage, Queens Road, Weybridge, Surrey KT13 0AU	07/07/2016	APP/K3605/W/16/3142140
2016/0380	53 & 53A The Furrows, Walton-on-Thames, Surrey KT12 3JG	31/08/2016	APP/K3605/W/16/3150955
2015/3014	Touchwood, 9 Broom Close, Esher, Surrey KT10 9ET	08/09/2016	APP/K3605/W/16/3149477
2015/4401	Land to rear of 4 and 4a Castle View Road, Weybridge, Surrey KT13 9AB	22/09/2016	APP/K3605/W/16/3151802
2016/0638	Land adjacent to 20 Holstein Avenue, Weybridge, Surrey KT13 8NX	27/10/2016	APP/K3605/W/16/3153965
2016/1260	16 Holroyd Road, Claygate, Esher KT10 0LG	11/05/2017	APP/K3605/W/16/3164197
2016/1963	Esher Tyre and Exhaust, The Broadway, Thames Ditton, Surrey KT7 0LU	11/05/2017	APP/K3605/W/16/3164143
2016/2230	Princes Cottages, Leatherhead Road, Oxshott KT22 0EX	11/05/2017	APP/K3605/W/16/3163557
2016/2544	14 Burwood Road, Hersham, Walton-on-Thames KT12 4AG	11/05/2017	APP/K3605/W/16/3164019
2016/1677	12 Littleworth Common Road, Esher, Surrey KT10 9UE	05/07/2017	APP/K3605/W/16/3166135
2017/0346	89 West End Lane, Esher KT10 8LF	03/10/2017	APP/K3605/W/17/3179354
2016/3470	Land to the west of 4 Thistlecroft Road, Hersham, Walton-on-Thames KT12 5QZ	29/09/2017	APP/K3605/W/17/3178213
2016/4076	11 Oakfield Glade, Weybridge KT13 9DP	13/12/2017	APP/K3605/W/17/3181923