

Executive Summary

Following success in the Court of Appeal on 11 May 2016 a Written Ministerial Statement (WMS) on affordable housing was reinstated. Its reinstatement has had a significant impact on how local planning authorities seek to meet local affordable housing needs through new development. This is because the WMS states that contributions should not be sought from housing developments comprised of 10 units or fewer. The WMS is expressed in unqualified terms. However, the Court of Appeal has confirmed, that, as with all elements of national planning policy, a local planning authority is entitled to depart from the guidance contained in the WMS if material considerations indicate that it is appropriate so to do.

The Council considers that local evidence and circumstances are such that the thresholds within the adopted Core Strategy Policy CS9 which requires contributions from proposals of five or more dwelling remains sound. This position statement sets out the justification and the evidence for the continued application of its policy. It focusses upon the following considerations:

- Affordable housing need & house prices,
- Housing delivery & the role of small sites,
- Housing land supply; and
- Impact on the delivery from SME builders.

The existing need for affordable housing in Epsom & Ewell at 2016 stands at 4,658 homes¹. This compares with an overall objectively assessed need over the forthcoming plan period of 7,106 dwellings². There are currently around 857 people on the Council's housing register, who are hoping to be allocated one of the scarce social homes available in the Borough. Typically we have around 100 affordable rented properties that become available each year – for example during 2016/17 we had 114 affordable rented properties become available; in comparison during the previous year we only had 79.

The average price for home in the Borough in September 2017 was £474,775, in comparison to UK average of £226,367. However, the gross average income for a full time working resident was £41,818, which result in the Borough having an extremely high affordability ratio of house prices to incomes. It is unsurprising that the Borough has the second highest level of housing benefits claimants in employment across the whole South East. The need and shortage of affordable housing is chronic and there is a pressing need to achieve the Core Strategy's target to deliver 950 affordable homes by 2022.

The Local Plan evidence³ shows that there is currently not enough available housing land to meet the overall demand for housing and the Council is unable to demonstrate a 5 year housing land supply against the objectively assessed housing need. Epsom & Ewell is heavily constrained in terms of where new development can go – in particular, the opportunities for new large scale housing are extremely limited. This means that small sites play a significant role within Epsom & Ewell's housing land supply and housing delivery into the immediate future. Indeed, 60% of all valid residential planning permissions are from small sites.

¹ North East Surrey and Kingston upon Thames Strategic Housing Market Assessment 2016

² North East Surrey and Kingston upon Thames Strategic Housing Market Assessment 2016

³ Epsom & Ewell Strategic Housing Land Availability Assessment 2017

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The key objective behind the WMS, was to remove the perceived financial obstacle (of affordable housing provision) to small and medium-sized house builders and thereby enable them to contribute towards the 'significant boost'⁴ in housing supply. While this perception may have some foundation in other parts of the country that is not the case in Epsom & Ewell. In the Borough, the pattern of historic delivery does not demonstrate that the current requirements as set adopted within the Core Strategy Policy CS9, have deterred development on smaller sites.

Moreover, our evidence demonstrates that development of smaller sites (i.e. of fewer than 10 dwellings) would not be rendered unviable by our affordable housing requirements. It is noteworthy that in some years, development on small sites has equated to 26% of all housing completions. This is not an insignificant contribution to housing supply. It is the Council's view that this demonstrates a strong and consistent record of high numbers of new dwellings coming forward from small-scale developments; which have not been adversely prejudiced by Core Strategy Policy CS9.

In order to ensure that affordable housing obligations do not place a burden on the delivery of new housing (regardless of scale) express provision is made within Core Strategy Policy CS9 to allow exceptions to the requirements of the policy where required to achieve viability. Moreover, it is often the case that commuted sums in lieu of onsite provision are accepted. The Borough Council has used these commuted sums to deliver 109 social rented homes and 18 intermediate affordable homes.

On that basis, the Borough Council considers that Core Strategy Policy CS9 has not adversely affected the viability of new development. It has been thoroughly assessed through the adoption of new local plan policies and site allocations, and as part of the Community Infrastructure Levy (CIL) Charging Schedule. These process have confirmed that our policy approach does not have an adverse financial impact on small-scale developments, or the developers who bring them forward.

To conclude, the Council has due regard to the WMS and the associated changes to national planning practice guidance. Nevertheless, we need to comply with both the Government's policy delivering development on previously land and continue to deliver affordable units (to meet the identified local need) as required under NPPF Paragraph 50.

This can only be achieved by continuing to apply Core Strategy Policy CS9 as part of the planning application decision making process. Where applicants consider that the requirement is disproportionate, we will request that the relevant information setting out scheme viability is submitted for independent assessment as set out in our Developer Contributions SPD. 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 and guidance.

⁴ The NPPF Paragraph 47.

1. Introduction

- 1.1 A Written Ministerial Statement (WMS) was laid before the House of Commons on 28 November 2014, which amongst other things, indicated that contributions should not be sought for developments comprised of 10 units or fewer. The content of the WMS was successfully challenged in the High Court by West Berkshire Council and Reading Borough Council in July 2015. The Government subsequently challenged the High Court's decision in the Court of Appeal. On 11 May 2016, the original High Court ruling was quashed and the changes to national policy reinstated.
- 1.2 Our policy is set out in CS9 of the Core Strategy. This states that we will seek contributions (either on-site or financial) for affordable housing on development where there is a net gain of 5 units. Since its introduction, most housing developments (of five or more dwellings) have provided some form of contribution towards meeting housing need. Due to the predominantly constrained nature of the Borough and the type of development sites coming forward, the potential affordable housing contribution from smaller sites is highly valued. The importance of these smaller sites has increased as the plan period has progressed – this is principally due to the front-loaded delivery of new housing (see Section 3 for further details).
- 1.3 It would appear that our policy towards affordable housing does not align with the position set out in the WMS and Planning Practice Guidance. Having taken legal advice, we are of the view that the WMS and associated Guidance are important material considerations, which can legitimately be weighed against other factors (in the planning balance) provided that those factors are fully justified by relevant evidence. An overview of the legal position obtained by the Borough Council is included under Annex 1.
- 1.4 Resolving the conflict between Core Strategy Policy CS9 and the WMS requires that decision takers assess the weight attached to both sides of the conflict, in addition to other material considerations. Ultimately it is for the Local Planning Authority to decide on each relevant application where there are sufficient local circumstances to allow the implementation of local policy.
- 1.5 This Statement seeks to explain and provide justification for our approach of continuing to seek affordable housing contributions on developments of 10 units or fewer. We are taking this approach because of the exceptional local circumstances relating to housing affordability, delivery and supply. We believe that these are material considerations that are supported by relevant evidence, which have a bearing on development management decisions and any subsequent appeals.
- 1.6 The statement is relevant to both planning applications and challenges through the appeal process.

2. Affordable Housing Need & House Prices

- 2.1 The Council current Core Strategy Policy CS9 sets a target that overall, 35% of new dwellings should be affordable. This equates to the provision of 950 new affordable homes over the period 2007-2022.
- 2.2 Demand for affordable housing in Epsom & Ewell has been acute for over ten years. This is sharply evidenced by our most recent [SHMA](#) (June 2016) and [our previous SHMAs](#) (2008, updated 2009). The 2016 assessment advised that 60% of the objectively assessed housing need (OAHN) figure of 418 new homes per year must be affordable. In September 2017, the Government published a consultation, which included a proposed standard methodology⁵ to identify an OAHN figure. This standard methodology produced a needs figure for Epsom & Ewell of 579 new homes per year. On that basis, the need to deliver a greater number of affordable homes each year will continue to rise.
- 2.3 Every single affordable home that we can secure is critical in meeting demand. The context is as follows. There are only 2,400 affordable rented homes in Epsom & Ewell. At just 8% of the total housing stock, this represents one of the most limited supplies of social housing in the Country. By comparison the neighbouring Borough of Elmbridge has in access to some 5,500 affordable rented homes.
- 2.4 Added to the problems created by a severely limited supply of social housing, the existing social stock in Epsom & Ewell becomes available for re-letting at around half the frequency expected when compared to turnover in the rest of the Country. Once allocated a home our residents stay put and do not move on to other forms of tenure, a clear indicator of the lack of affordability in the Borough.
- 2.5 There are in excess of 2,200 applicants⁶ currently on the housing waiting list. These people are hoping to be allocated one of the scarce 2,400 social homes. Within that context it is unsurprising that average waiting times are lengthy. Our evidence shows that during 2016/2017 applicants could expect to wait an average around 200 weeks to be allocated a home. The waiting list has increased as have the waiting time by almost an entire year from the 152 week average wait during 2015/2016.
- 2.6 Private rents have risen in the Borough by over 40% in the past five years (Home Truths South East). This serves as a constraint the private rented sectors' ability to provide a viable alternative to social housing. It is unsurprising that within this context, the Borough has the highest number of families in B&B accommodation in Surrey – it should be noted that this is even higher than the larger and more urban Royal Borough of Kingston upon Thames which neighbours Epsom & Ewell.

House Prices

⁵ DCLG Consultation: Planning for the right homes in the right places. September 2017

⁶ This is for 2016.

- 2.7 Housing affordability is a key corporate issue – its importance being reflected by its prominent position within our Corporate Plan. Whilst high house prices are not unusual across the South East of England, they are most sharply felt in the North East Surrey sub-region that borders Greater London. This has been graphically evidenced in the Government's own Housing White Paper⁷, which identifies Epsom & Ewell as one of ten districts or boroughs in the Country with the highest ratio of median house price to median earnings. This confirms what we have known for some time – that Epsom & Ewell is, in relative terms, one of the most unaffordable places to live in the Country (inclusive of Greater London).
- 2.8 We monitor average property prices through its Local Plan Annual Monitoring Report this provides an important contextual indicator to the position set out above. Our latest Monitoring Report (2014/15) shows that average property prices have continued to rise, by 10% to 24% across the Borough, effectively increasing unaffordability. Recent data from the Land Registry indicates the average price for home in the Borough in September 2017 was £474,775, in comparison to average UK price of £226,367. The average price paid for a flat or a maisonette in Epsom & Ewell is £304,370 and a semi-detached house commanding £543,286. Further evidence on house prices in Epsom & Ewell is included under Annex 2.
- 2.9 The average house price in September 2017 was in excess of £470,000 whereas the gross average income for a full time working resident was £41,818 and, as such, the Borough has a high affordability ratio of house prices to incomes. Consequently, the Borough is an extremely difficult place to get a step on the ladder where average wages, house process and limited ability to save for a deposit combined to price out would be homeowners. It is also noteworthy that the Borough has the second highest level of housing benefits claimants in employment across the whole South East.

3. Housing Delivery and the role of Small Sites

- 3.1 Our monitoring data shows that a large proportion of new development in Epsom & Ewell continues to be delivered on small sites. In the last five years since 2012, 241 units have been delivered on sites of less than 10 units and where there has been a net increase in housing. This equates to 16% of the total net amount of homes built during that period, Table 1 provides a breakdown of proportion of completions from small sites over the past 6 years.

Table 1: Proportion of Housing completions on small sites

| Year | No. units from sites of 10 or fewer | Total No. of units | % on small sites |
|--------------|-------------------------------------|--------------------|------------------|
| 2016/17 | 64 | 307 | 21% |
| 2015/16 | 39 | 169 | 23% |
| 2014/15 | 51 | 193 | 26% |
| 2013/14 | 48 | 234 | 21% |
| 2012/13 | 39 | 522 | 8% |
| 2011/12 | 33 | 289 | 11% |
| Total | 274 | 1,714 | 16% |

⁷ Fixing our broken housing market Figure 3 Affordability Ratio by Local Authority 2015.

- 3.2 In terms of the type of sites coming forward in the Borough 57 current planning permissions are for developments of fewer than 10 units where there is a net increase in housing. This is 60% of all current valid residential planning permissions. In 2016/17 71% of all residential permissions granted (based on the number of units) were under 10 units and under 1000sqm. It is clear that these small sites form a significant proportion of development in the Borough and contribute significantly to both market and affordable housing provision.
- 3.3 Throughout this Statement, we have underscored the important role that small sites play, and will continue to play, in terms of meeting affordable housing need. Under this section we detail how the contribution from small development sites translates into on-the-ground delivery.
- 3.4 Affordable housing delivery is monitored on an annual basis through the Local Plan Annual Monitoring Report. During the five year period from April 2008 to March 2013, 29% of all new homes completed were classified as 'affordable homes'. More recently the delivery of new affordable homes has improved; during the period 2012-13, 40% of all housing completions were affordable - equating to 207 new affordable homes.
- 3.5 In Epsom & Ewell small development sites have tended to make a financial contribution towards meeting affordable housing needs; as opposed to physical on-site contribution of a new affordable home. In many cases this is because we have taken developer's viability statements into full account – namely, that smaller development sites are frequently unable to sustain an on-site contribution. Nevertheless, these financial contributions have proved vital in addressing need on the ground.
- 3.6 We have set out part of the case for financial contributions under Table 2. This illustrates the scale of new affordable homes delivered with the assistance of commuted sum funding. The evidence speaks for itself, clearly demonstrating that financial contributions from small development sites have helped to deliver 127 new additional affordable homes (through a combination of new- built and acquisitions) whilst supporting the better use of the existing social housing stock, during the Plan period, a key element of the NPPF⁸.

Table 2: Affordable homes delivered with the assistance of commuted sum funding

| Scheme | No. of homes delivered/ under construction/ due for occupation imminently | Cost |
|--|---|-------------|
| Affordable <i>rented</i> homes (new build and acquisitions) | 45 supported housing units 16 family sized houses on a stalled development site 13 new build rented homes made available as homeless prevention accommodation | £1.6M |

⁸ Third bullet point of paragraph 50- 'where they have identified that affordable housing is needed set policies for meeting this need on site, unless off-site provision or a financial contribution broadly equivalent value can be robustly justified (for example to improve or make more effective use of existing housing stock)...'

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| | | |
|--|--|---|
| | 20 new build affordable homes in a regeneration area | |
| Empty homes returned to use as affordable <i>rented</i> homes | 12 homes for occupation by homeless households (block of 8 flats and 4 cottages) | £739,000 |
| Wheelchair accessible affordable <i>rented</i> homes | 3 (2 of which are new build) | Costs included in schemes above and below |
| Sub-total – rented units | 109 | |
| Intermediate affordable housing units | 10 new build units in a regeneration area 8 new build units on a stalled development scheme | £478,000 |
| Sub-total – intermediate units | 18 | |
| Total units and cost | 127 £2,827,000/127 = | £22,259 |

- 3.7 It is acknowledged that the period of successful on site affordable housing delivery can be principally attributed to the “front-loading” of the Core Strategy housing target – a period when our strategic housing site allocations came forward. There are now only a handful of genuinely strategic development opportunities left.
- 3.8 Therefore, the smaller sites, yielding between 5 – 9 dwellings make up a sizable proportion of our current supply. Until we, and the development industry, are once again in a position to facilitate the delivery of new strategic housing allocations, we have to consider these smaller sites to meet the Borough’s affordable needs. If that source of supply were cut-off then we run the very real risk of falling into an intractable cycle of delivering no affordable housing. That period could endure for at least five years.
- 3.9 The Government continues to prioritise the delivery of new housing on brownfield sites. This is an approach supported in the Council’s Core Strategy and the majority of housing that has come forward in the Borough since the adoption of the Core Strategy has been on previously developed land. However, Epsom & Ewell is heavily constrained in terms of where new development can go - the opportunities for new large scale housing are extremely limited. As a consequence, the Core Strategy has directed development to the defined built up area of Epsom & Ewell and within the remaining hospital cluster sites. Emphasis is on the re-use of suitable previously developed land for housing.
- 3.10 Nevertheless, the evidence demonstrates a strong performance of housing delivery (against the Core Strategy target) during the current local plan period. This is best illustrated by through the Housing Trajectories and Five Year Housing Land Supply Statements contained within the Local Plan Annual Monitoring Reports prepared during 2005 – 2013. Collectively these illustrate how the Core Strategy target has been met and exceeded. Throughout this period the Borough’s housing land supply has consistently been in excess of the five year supply requirement.

3.11 However, that same evidence illustrates that the larger housing sites that have formed the bulwark of local supply are now beginning to dry up, and that the remaining sources of supply will come from smaller non-strategic sites. In order to address this issue we are making good progress in preparing a new Local Plan and are working towards a draft plan submission in 2018. This will seek to identify future sources of housing land supply. However, until those sites come forward through the planning system, we will remain reliant upon the smaller non-strategic sites to meet both affordable and market housing need. For that reason Core Strategy Policy CS9 remains a vital mechanism for securing new affordable housing.

4. Epsom & Ewell's Housing Land supply

4.1 A review of current and extant planning permissions alongside the Epsom & Ewell Strategic Housing Land Availability Assessment 2017 has identified a supply of 2,275 units for the next 15 years (2017-2032). However, against the Objectively Assessed Housing Needs figure of 7,106 units (418 per annum) between 2015 and 2032, this equates to 1.3 years of housing land supply. Consequently, Epsom & Ewell can achieve less than 40% of the projected housing need resulting in a residual requirement of 4,381 units, across the forthcoming 17 year plan period.

Future Land Supply- Importance of small sites

4.2 The Strategic Housing Land Availability Assessment 2017 (SHLAA)⁹ considers sites with the potential to accommodate 5 or more net dwellings. This yield is considered 'strategic' within the local context. This approach is in accordance with Planning Practice Guidance and reflects the local circumstances relating to land supply and housing delivery.

4.3 The SHLAA 2017 has identified 57 sites (over 5 units) which are considered to be either deliverable or developable and which have the potential to deliver an estimated 1,807 new homes. The average anticipated yield from the small SHLAA opportunity sites is 6.5 units. Table 3 shows that of the 57 sites, 31.5% are classified as small sites with the potential to deliver between 5 and 10 units. In total, 45% of the 'deliverable' SHLAA sites opportunity sites anticipated to come forward within the next 5 years are small sites.

Table 3: Breakdown of SHLAA 2017 sites

| SHLAA Site Type | Deliverable Units & (no. of sites) | Developable Units & (no. of sites) | |
|----------------------------------|---|---|-----------------|
| | 1-5 yrs | 6-10 yrs | 11-15 yrs |
| Small SHLAA sites (5-10 units) | 27 (5) | 86 (11) | 18 (2) |
| Medium SHLAA sites (11-19 units) | 26 (2) | 94 (7) | 32 (2) |
| Large SHLAA sites (20 + units) | 156 (4) | 1136 (18) | 232 (6) |
| Total | 209 (11) | 1316 (36) | 282 (10) |

⁹ The SHLAA 2017 is a technical evidence base document that informs the preparation of the Epsom & Ewell Local Plan. It seeks to identify the location, nature and scale of future available and deliverable sources of housing land supply.

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- 4.4 Further analysis shows that in total, 131 new homes could be delivered from these SHLAA small sites, of these, 27 new homes are anticipated to be delivered within the next five years. This equates to 12% of the total yield from SHLAA sites within this period (the remainder of the five year supply is made up of sites that are under construction or committed and includes sites outside of the SHLAA thresholds of which 60% is from sites of 10 or fewer). The SHLAA and the 5 year land supply confirms that a significant proportion of the Borough's future housing land supply comes from small sites.
- 4.5 In order to gain a fuller understanding of how the small sites identified within our SHLAA will contribute towards meeting affordable housing need, further assessment was undertaken. This is set out under Table 4 below. The evidence demonstrates the potential contribution to affordable housing provision from small sites across the forthcoming plan period (2015-2032). Specifically, Table 4 indicates the invaluable contribution of over 5% to affordable housing delivery in the next 5 years from Small SHLAA sites

Table 4: Anticipated on site affordable housing provision from SHLAA sites within the next 5 years

| | % of contribution | Total potential units within 1-5 yrs | No. of affordable units within 1-5 yrs | % of total affordable units 1-5 yrs | Total potential units 2017-32 | No. of affordable units 2017-2032 | % of total affordable units 2017-2032 |
|--------------------------------|-------------------|--------------------------------------|--|-------------------------------------|-------------------------------|-----------------------------------|---------------------------------------|
| Small SHLAA sites (5-10 units) | 20% | 27 | 5.4 | 7.1 | 131 | 26 | 3.9 |
| Medium SHLAA (11-19 units) | 11-14 (20%) | 15 | 3 | 3.9 | 73 | 14.6 | 2.1 |
| | 15-19 (40%) | 11 | 4.4 | 5.85 | 79 | 15.6 | 2.3 |
| Large SHLAA sites (20+ units) | 40% | 156 | 62.4 | 82.9 | 1524 | 609.6 | 91.5 |
| Total | ---- | 195 | 75.2 | 100% | 1,807 | 665.8 | 100% |

- 4.6 It is acknowledged that on site affordable housing provision is not always achievable due to viability. In these exceptional instances, the Council is able to negotiate equivalent cash in-lieu contributions. Table 5 sets below out the potential commuted sum contribution which could be achieved from small sites. **The figures used in Tables 5 & 6 are indicative and have been reproduced here to support the Statement. These figures are not to be used for any other purpose.**
- 4.7 The values identified in Table 5 have been produced using the Council's Housing Commuted Sum Calculator. They provide an upper potential value based on current market asking prices and a lower value based on the lower quartile 2015 figures published in the SHMA 2016.
- 4.8 The off-site provision cost assumptions are summarised in Table 6. The potential scale of contribution was based on an average scheme providing No.6 x 2 bed houses with a 20% profile. This would represent the average site yield of the Small SHLAA sites and a 2 bed house is considered the mean housing offer.

Table 5: Anticipated financial contribution towards affordable housing provision from Small SHLAA sites within the next 5 years- SHOULD WE INCLUDE THIS???

| Timeframe (yrs) | No. of sites | Total No. of units | Equivalent On-site affordable units | Estimated equivalent financial contribution based on current asking prices (£)* | Estimated equivalent financial contribution based on Lower Quartile data (2015) from SHMA 2016* |
|-----------------|--------------|--------------------|-------------------------------------|---|---|
| 1-5 | 5 | 27 | 5.4 | 246,057 x 5.4= 1,328,707 | 97,637 x 5.4 = 527,239 |
| 6-10 | 11 | 86 | 17.2 | 246,057 x 11= 2,706,627 | 97,637 x 11= 1,074,007 |
| 11-15 | 2 | 18 | 3.6 | 246,067 x 2= 492,134 | 97,637 x 2= 195,274 |
| Total | 18 | 131 | 26.2 | 4,527,468 | 1,796,520 |

Table 6: Upper and Lower Commuted Sum Off- Site Provision Cost Assumptions per site

| | Upper Off Site Provision Costs (current market asking prices based from Zoopla 21/06/2017) | Lower Off Site Provision Costs (lower quartile data (2015) from the SHMA 2016) |
|---|---|---|
| Open Market Value of 2 bed house | £440,013 | £230,500 (property) |
| Market rental of a 2 bed house | £1,338pcm (£308 pw) | £1,009 pcm (£232 pw) |
| Affordable rental (80% full market offer) | £246 pw | £185 pw |
| Social rent (80% affordable rental) | £200 pw | £148 pw |
| Profit | 20% | 20% |
| Total Commuted Sum | £246,057 | £97,637 |

- 4.9 Table 5 shows that even if the lower quartile costings were used, the potential commuted sums would be significant. Furthermore, reflecting on the Council's past successful delivery facilitated by commuted sums, as highlighted in Table 2, the potential values identified in Table 5 would enable further significant and much needed delivery.
- 4.10 We are in the process of undertaking a partial review of our Core Strategy, focusing on housing policies and allocations. If any larger sites suitable for allocation come forward these will be considered through the Local Plan process. In the past we have sought to take account of the development economics effecting candidate allocation sites by carrying out strategic level viability appraisals. We intend to apply that process to larger candidate allocation sites and use any outputs to inform potential site specific affordable housing requirements. It is possible that such an approach may help to enhance affordable housing delivery. However, it is equally possible that it also identifies, at an early stage, financial obstacles to meeting need.
- 4.11 Nevertheless, even if we are able to identify large sites that are capable of making a greater contribution towards affordable housing need it is unlikely that these sites will be in a position to deliver any new housing within the next 5 years. Consequently, the delivery of affordable housing would be

significantly limited, which places a higher emphasis upon any contribution that can be gained from smaller sites.

5. Impact on the delivery from SME Builders

- 5.1 The Borough Council acknowledges that simply demonstrating a great need for affordable housing across the Borough, and how difficult it will be to address that need in the absence of contributions from small sites is not sufficient justification for pursuing an alternative approach to national policy. The Borough Council refers to the Court of Appeal decision (Paragraph 53), which appears to identify the rationale beyond the Government's decision to amend national planning policy. That is principally to halt the decline, or encourage the expansion of house building by smaller firms as a means of increasing the overall provision of new housing. If that is the reason driving changes in national policy then it is reasonable that the Borough Council consider the impact that its established policy approach has had upon this sector – specifically whether it has acted as a constraint. To this end the Statement provides an overview of the impact of the policy approach on development viability – with a focus upon the role of smaller firms.
- 5.2 Throughout the preparation and production of new local plan policy we have been mindful of any adverse impacts upon development viability. As a consequence, we have, for some time, sought to inform our policy making processes by accessing market signals relating to development viability. This has seen local plan policy options tested through viability appraisals – to ensure that they did not render development unviable. There is no evidence that any of our policies have at any point made new development unviable. Furthermore there is no evidence that our policy approach to affordable housing has specifically harmed small-medium enterprise (SME) housebuilders. Indeed, the majority of our new developments continue to be delivered by SME builders, with 60% of all valid residential planning permissions are from small sites. The Council has been unable to find any clear historical or recent trend for residential permissions on small sites lapsing. Furthermore, Officers are not aware of any local instances of stalled development due to viability issues relating to planning obligations associated with the requirements of Policy CS9.
- 5.3 Our approach towards securing new affordable housing has from the outset been informed by market signals. The policy and associated supplementary guidance provide applicants the opportunity to demonstrate viability through an independent financial appraisal process. This approach has been applied since the introduction of the policy, in order to negotiate a fair contribution from small sites. Since its adoption the policy has been securing new affordable homes from smaller sites, and critically it has not prevented development proposals from coming forward.
- 5.4 The viability evidence in support of the Borough Council's policy approach was validated through the comprehensive viability appraisals carried out in support of the introduction of the Community Infrastructure Levy (CIL). This work was carried out by the independent consultancy Peter Brett.
- 5.5 The development appraisals carried out in support of the CIL sought to establish whether there is sufficient viability within development (whether it be

housing or commercial) to accommodate Levy payments and the policy requirements set out in the Local Plan. It is particularly noteworthy because it made the following assumption that:

“A significant proportion of residential land transactions within Epsom & Ewell are for smaller sites capable of accommodating up to 14 apartments or houses. This figure is significant in that for 15 units and above, schemes are required to make a contribution of 40% affordable housing provision. For 14 units and under, the requirement for affordable housing is reduced to 20% and for 4 units and under there is no requirement towards affordable housing. From examining available market evidence we have therefore used three bands of land values, with smaller sites being higher value compared to sites capable of accommodating more units.” Epsom & Ewell Community Infrastructure Levy Viability Study June 2012

- 5.6 The methodology used by the appraisals used benchmark land values that reflected Local Plan policy. Namely, that those land values were based on sites delivering 4 units or less; 5 – 14 units; and sites delivering 15 units or more. The appraisals tested schemes at with requirements for 40% and 20% affordable housing. Although strategic in nature, the appraisal methodology was robust and reflected local conditions and values. Critically for the purposes of this statement, the appraisals demonstrated that residual land values after policy contributions (including affordable housing) remained high. It is noteworthy that the appraisals concluded that the Borough Council (as CIL Charging Authority) could have considered a higher Levy rate – but rather than take this approach the recommendation was to set a charge well below the identified viability ceiling. The Borough Council followed that recommendation – on that basis, with an improving economy (since 2012) it is assumed that typical residual values (particularly for smaller developments) remains high.
- 5.7 The Borough Council introduced the Levy on 1 July 2014. Since its introduction the Borough Council, acting as the Collecting Authority has collected in excess of £4,100,000.00. The Latest CIL Regulation 62 Report details all of the developments that are liable for the Levy; the developments that have been invoiced; and the collected receipts. This demonstrates that residential development, of all types and scale, has continued to come forward taking full account of Levy payments and Local Plan policy requirements.
- 5.8 On the basis of the above we conclude that neither the Levy nor our Local Plan policy requirements have had an adverse impact on growth taking place within the Borough. It is also stressed that the Borough Council’s approach provides applicants with an opportunity to identify an extraordinary on-site development costs through the open-book appraisal process. As a consequence, if there are demonstrable viability reasons for reduction in the contribution towards affordable housing the Borough Council will take these into account. There are many examples of Borough Council taking such evidence into account – thereby ensuring that growth is not unduly prejudiced.

6. Conclusion

- 6.1 Without the ability to collect affordable housing contributions from small sites we will be limited in our capacity to support the delivery of new affordable homes, and therefore to meet the acute need identified across the Borough.
- 6.2 Contributions secured to date have positively contributed to the delivery of affordable housing provision. It is clear that those contributions made from smaller sites are an invaluable source of supply currently and into the future. We anticipate that this will be particularly acute over the next five years due to the current absence of larger housing allocations.
- 6.3 Critically, the available evidence demonstrates that Core Strategy Policy CS9 has not had a negative impact on development coming forward from small sites. There is no evidence to suggest that local SME builders have been adversely burdened by our policy approach. In those untypical cases where an impact may arise, our approach provides developers with a mechanism to demonstrate that their development proposal is unviable. This allows for a reduction or in exceptional circumstances a waiving of any contribution on the basis of that site specific viability evidence.
- 6.4 We have due regard to the WMS and the associated changes to national planning practice guidance. Nevertheless, we need to comply with both the Government's policy delivering development on previously land and continue to deliver affordable units (to meet the identified local need) as required under NPPF Paragraph 50.
- 6.5 We can only achieve this by continuing to apply Core Strategy Policy CS9 as part of the planning application decision making process. Where applicants consider that the requirement is disproportionate, we will request that the relevant information setting out scheme viability is submitted for independent assessment as set out in our Developer Contributions SPD. 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 and guidance.

Annex 1 Legal Position on Written Ministerial Statement

Following the decision by the Court of Appeal, and the subsequent amendment of the Planning Practice Guidance, the Borough Council sought legal advice to establish where it stood within this changed policy landscape. The advice noted that the West Berkshire decision established that the Ministerial Statement is a lawful policy for the Secretary of State to issue as policy guidance. It also noted that whilst the Court of Appeal did not consider the wording of the Guidance it would be reasonable to assume that it could also be regarded as a lawful statement of policy (or amplification of how the policy in the Ministerial Statement is expected to be applied).

The advice to the Borough Council highlighted that the Court of Appeal held that it was not necessary for a policy to expressly set out exceptions to its terms in order for it to be lawful. This did not mean that there could not be exceptions to the policy when it came to be applied in the circumstances of an individual case, but simply that there was no legal requirement for such exceptions to be spelt out in the wording of the policy (or to be limited to the terms of any exceptions that were expressly set out).

It was also highlighted that the Court of Appeal recognised that despite the apparently all-embracing terms of the Ministerial Statement, it was in law no more than a material consideration. Therefore, like any other material consideration it was a matter for the planning judgment of the decision maker in the individual case to decide how much weight to give to the policy expressed in the Statement and to determine whether there were circumstances which would merit an exception being made when applying the policy to the facts of that case.

As a matter of law, the policy in the Ministerial Statement (and repeated in the Guidance) on thresholds for affordable housing is a material consideration rather than a mandatory requirement. The Borough Council has a duty under s.70(2) Town & Country Planning Act 1990 to have regard to that material consideration, but how it should weigh in the planning balance is a matter for the Borough Council's planning judgment. When the Council is determining a planning application, it is for the Council to decide how much weight to give to that policy guidance, both in itself, and in relative terms when compared to the different thresholds in the Core Strategy. The Borough Council is, therefore, free, as a matter of law, to decide that it wishes to give more weight to the Core Strategy position than to the more recent national guidance and so to depart from that national guidance.

However, should the Borough Council exercise this freedom and refuse planning permission on the basis that there is no or inadequate provision for affordable housing – then it acknowledges that it can expect to have to justify that position in the event that there is an appeal. The Borough Council further acknowledges that if it cannot provide a sound evidential justification for its position, it cannot realistically expect its decision to be supported. This Statement sets out the data that the Borough Council will draw upon to maintain its established and successful policy approach.

Annex 2 House Prices in Epsom & Ewell

The National Housing Federation has collated data¹⁰ on this particular issue. Their Study has already been used by Elmbridge Borough Council in defence of their policy approach on this matter. The Federation's Study ranks average house prices across the South East Region. Although the Borough is not the most unaffordable area (that honour falls to our neighbour and Housing Market Area Partner, Elmbridge Borough Council) it remains in the top 10%. Data from the Land Registry¹¹ indicates the average price for home in the Borough in September 2017 was £474,775, in comparison to average UK price of £226,367. The average price paid for a flat or a maisonette in Epsom & Ewell is £304,370 and a semi-detached house commanding £543,286.

Coupled to this the Borough has a high affordability ratio of house prices to incomes. It is also noteworthy that the Borough has the second highest level of housing benefits claimants in employment across the whole South East. This is a critical factor as these are the residents are in greatest need of the affordable housing being forward through our policy approach.

More recent data¹² compiled to support Article 4 Directions served upon office buildings in Epsom Town Centre provides signals of rising prices for flats and apartments. This is relevant as it provides an insight to the increasing unaffordability of this type of housing (for those in greatest need). Specifically our data has shown that whilst the lost office sites have yielded new residential accommodation it has typically taken the form of high-value units that do not fully meet local needs. Typically, these units were marketed for between £400,000.00 up to £700,000.00. The higher end of these conversions was noted at £750,000.00 for a two bed unit. Due to not requiring planning permission, these new residential units have not included any affordable units, which is an acute area of local need.

Unsurprisingly our latest data shows that house prices across the Borough continue to rise. Whilst the Borough is not as unaffordable as some of its immediate neighbours it continues to be a very difficult place for people to afford to buy. Established evidence demonstrates that the South East of England experiences high levels of affordable housing demand, coupled with prices that continue to rise higher than anywhere else in the Country (outside of London).

There is no local planning policy intervention approach that can change that pattern. However, our policy approach to delivering affordable housing (whether on site or by way of commuted sum) can continue to secure affordable housing for people to rent, which continue to be the area of greatest need¹³.

¹⁰ Home Truths 2015/16, National Housing Federation http://s3-eu-west-1.amazonaws.com/pub.housing.org.uk/Home_Truths_201516_South_East.pdf

¹¹ Data from the Land Registry September 2017

¹² Epsom Town Centre Office to Residential Article 4 Direction Study (November 2015)

¹³ SHMA (July 2016) Page 147