

Affordable Housing Rebuttal Proof of Evidence of Annie Gingell BSc (Hons) MSc MRTPI

Land to the rear of 42-100 Tollgate Road, Colney Heath,
St Albans, Hertfordshire

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Outline application (access sought) – Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom-build dwellings together with all ancillary works.

Land to the rear of 42-100 Tollgate Road, Colney Heath, St Albans, Hertfordshire, AL4 0PY

Vistry Homes Limited

September 2023

PINS REF: APP/B1930/W/23/3323099

LPA REF: 5/2022/1988

OUR REF: M23/0314-08.RPT

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Introduction

Section 1

- 1.1 This short rebuttal evidence is submitted in response to the Colney Heath Parish Council Rule 6 Party's Affordability Proof of Evidence of Mr John Clemow.
- 1.2 The specific concerns which necessitate this rebuttal evidence relate to the need to clarify the evidence provided in respect of the affordability of the proposed affordable tenures proposed at the appeal site.
- 1.3 I do not comment on other matters contained within the Colney Heath Parish Council Rule 6 Party's Proofs of Evidence nor the Council's Proofs of Evidence, but the lack of comment should not be construed as agreement.

Rebuttal Evidence

Section 2

Introduction

- 2.1 It is a matter of fact that any affordable tenure which meets the NPPF¹ Annex 2 definition of affordable housing should be treated as such regardless of market conditions.
- 2.2 There is no requirement within national nor local policy and guidance for affordable tenures that meet the Annex 2 definition to undergo further affordability testing to be considered acceptable in planning terms.
- 2.3 I will demonstrate that the evidence of Mr Clemow is at best limited and tangential and lacks any real-world understanding of the application of national and local planning policy and also the application of Governments' Rent Standard (2023), which is set outside of national planning guidance.

Housing for Rent

- 2.4 Section 7 of Mr Clemow's evidence sets out select data relating to "median rents" for two bed properties in St Albans and "*[i]ncomes for lower paid workers in Hertfordshire*".
- 2.5 Paragraph 7.1 notes that "*The ONS² deems an area to have private rent that is affordable if it is equivalent to 30% or less of the median income of private renting households*" (my emphasis). ONS data indicates that for 2022 the median income in St Albans was £33,895³.
- 2.6 This also should be viewed in context of the fact that 2020 LHNA⁴ (**CD10.2**) applies an income threshold of 35% to calculate rental affordability (**p.79, [5.50]**) and identifies a median income of £51,400 (**p.77, [Table 28]**) for St Albans in 2018.
- 2.7 Mr Clemow seeks to calculate incomes for lower paid workers in Hertfordshire by identifying just six "low paid jobs" advertised across Hertfordshire, arriving at a mid-point of £25,000⁵. Only one of the jobs identified by My Clemow is located within the

¹ National Planning Policy Framework (2021)

² Office for National Statistics

³ ONS Ratio of House Price to Work-place Based Earnings

⁴ South West Hertfordshire Local Housing Need Assessment (2020)

⁵ Mr Clemow also identifies NHS 2022/23 pay scales for bands 2 to 9 but appears to omit this data from his analysis.

St Albans Local Authority area. This is a rather crude and rudimentary way to calculate incomes.

- 2.8 In contrast the ONS calculates income using data *“taken from the Annual Survey of Hours and Earnings release”*. The *“annual estimates of earnings are based on the tax year that ended on 5th April in the reference year and relate to employees on adult rates of pay who have been in the same job for more than a year”*.
- 2.9 It is unclear why Mr Clemow has sought to calculate incomes at a county level given that the site is within the St Albans Local Authority area and there is no cascade within the Section 106 agreement to allow residents outside of St Albans to occupy the units.
- 2.10 The councils Housing Allocations Policy (**CD10.8, p.10, [7.6]**) also requires applicants to live within the Local Authority area except in “special circumstances”.
- 2.11 Irrespective of this Mr Clemow has fundamentally misunderstood how rent for affordable rented tenures are calculated. It is not as simple as deducting 20% from private rental properties identified on Rightmove in a given area.
- 2.12 Annex 2 of the NPPF (2021) is clear that for rented affordable housing products “the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable)” (my emphasis).
- 2.13 The Government’s current policy for affordable rent is set out in the April 2023 Rent Standard (**Appendix AGr1**). The Rent Standard (2023) sets out that where Affordable Rent is being charged, the maximum rent inclusive of service charge for a new tenant under a new tenancy is 80% of the market rent for the tenant’s accommodation.
- 2.14 Footnote 6 of the Rent Standard (2023) is clear that “Market Rent” in relation to affordable rented accommodation means “an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.”
- 2.15 The Rent Standard (2023) goes on to set out a 'formula rent' for each property to be let as an affordable rented unit, which is calculated based on the relative value of the property, the size of the property and relative local income levels.
- 2.16 Paragraph 3.11 of the Rent Standard (2023) is clear that if the formula rent is higher than 80% of the weekly market rent (inclusive of service charges) for the tenant’s accommodation, the maximum weekly rent is charged using the formula rent calculation.

- 2.17 The amount of affordable rent a person pays therefore depends on the location, size of the property and relative local income levels which will vary from street to street.
- 2.18 National guidance clearly demonstrates that it is not within the appellants gift, nor the councils for that matter, to dictate the rate at which the affordable rented properties should be let at. All of the proposed affordable rented properties at the appeal site will be let in line with the Rent Standard (2023) and therefore meet the Annex 2 definition of affordable housing.

First Homes

- 2.19 Section 8 of Mr Clemow's evidence sets out data relating recently sold two bed properties in Colney Heath, ranging from £305,000 for a terraced property to £465,000 for a semi-detached property.
- 2.20 As set out at paragraph 11.29 of my main Proof of Evidence (**CD9.1**) the Planning Practice Guidance ("PPG") is clear that in order for a property to qualify as a First Home "*after the discount has been applied, the first sale must be at a price no higher than £250,000*" (my emphasis).
- 2.21 This once again demonstrates that Mr Clemow has fundamentally misunderstood how property prices for First Homes units are applied in practice.
- 2.22 Paragraphs 10.19 to 10.22 of my main Proof of Evidence (**CD9.1**) demonstrate that the First Home properties at the appeal site would be affordable to couple's (each earning lower quartile incomes) in the district.

Shared Ownership

- 2.23 Section 9 of Mr Clemow's evidence provides data from Newlon Living on the monthly cost of a Shared Ownership property with an open market value of £380,000 at a range of percentage shares.
- 2.24 At paragraph 9.2 he concludes that "*On this basis the shared ownership would consume far more than 30% of the gross monthly income of a lower paid worker.*"
- 2.25 As highlighted by Mr Clemow's own evidence (**p.3, [7.1]**) the 30% income threshold is in relation to the affordability of private rents not home ownership. Annex 2 of the NPPF is clear that Shared Ownership properties are routes to home ownership meaning the 30% income threshold is not applicable in this context.

⁶ Paragraph: 001 Reference ID: 70-001-20210524

- 2.26 Similarly the 2020 LHNA (**CD10.2**) uses the higher 35% income threshold only in respect of establishing households in need of social/affordable rented housing. Paragraph 5.52 (**p.79**) of the 2020 LHNA is clear that:

“Generally, the income required to access owner-occupied housing is higher than that required to rent and so the analysis of the need for social/affordable rented housing is based on the ability to afford to access private rented housing.” (my emphasis).

- 2.27 In respect owner occupation affordability paragraph 5.53 (**p.79**) goes on to note that:

“For the purposes of this assessment, the income thresholds for owner-occupation assume a household has a 10% deposit and can secure a mortgage for four and a half times their salary.”

- 2.28 When applying the correct income thresholds for owner-occupied affordability (i.e., 10% deposit and income to secure a 4.5x salary mortgage) even on Mr Clemow’s flawed calculation of median incomes for low paid workers a Shared Ownership property costing £380,000 would be considered affordable.

Conclusion

- 2.29 Overall, and considering the key findings of my main evidence and the acute need for affordable housing across the St Albans administrative area, coupled with the lack of suitable alternatives, it is my view (and the Councils⁷) that the affordable homes to be provided as part of the appeal proposals should be afforded **very substantial weight** in the determination of this appeal.

⁷ As agreed with the council in the main Statement of Common Ground (**CD8.3, p.16, [6.50]**)

Appendix AGr1

Rent Standard (2023)





Regulator of
Social Housing

Rent Standard

April 2023



OFFICIAL

1. Required outcome

- 1.1 This 2023 Rent Standard has been set in response to the Direction on the Rent Standard 2023 (the Direction). The regulator has had regard to the Government's Policy Statement on Rents for Social Housing 2022 (hereafter Rent Policy Statement)¹ in setting this 2023 Rent Standard.
- 1.2 This 2023 Rent Standard applies to rent periods that begin in the 12 months from 1 April 2023 to 31 March 2024 in relation to low cost rental accommodation.
- 1.3 This Rent Standard sits alongside the Rent Standard – April 2020 (hereafter 2020 Rent Standard) which continues to apply to supported housing as set out in para 2.3 below.
- 1.4 Registered providers² must set rents in accordance with the Rent Policy Statement.

2. Exclusions from this 2023 Rent Standard

- 2.1 This 2023 Rent Standard applies, subject to the exceptions in 2.2-2.6 below, to 'low cost rental' accommodation, as defined by section 69 of the Housing and Regeneration Act 2008. All other terms used in this Rent Standard are defined within the Rent Policy Statement.
- 2.2 This 2023 Rent Standard does not apply to the following categories of property, as defined in chapter 5 of the Rent Policy Statement:
 - Shared ownership low cost rental accommodation
 - Intermediate rent accommodation
 - Specialised supported housing
 - Relevant local authority accommodation
 - Student accommodation
 - Private Finance Initiative social housing
 - Temporary social housing
 - Care homes.

¹ The Policy Statement on Rents for Social Housing was updated in December 2022.

<https://www.gov.uk/government/publications/direction-on-the-rent-standard-from-1-april-2020/policy-statement-on-rents-for-social-housing>

² This Rent Standard applies to both private registered providers and local authority registered providers.

2023 Rent Standard

- 2.3 This 2023 Rent Standard does not apply to any type of supported housing (as defined in paragraphs 2.39 and 2.40 of the Rent Policy Statement). The setting of rent for supported housing must continue to comply in full with all the requirements and expectations set out in the 2020 Rent Standard.
- 2.4 This 2023 Rent Standard does not apply to property let to a high income social tenant for the period of time where that property is let to that tenant. Where a tenancy of a high income social tenant ends, or where the tenant no longer fits the definition of “high income social tenant” as set out in the Rent Policy Statement, this 2023 Rent Standard then applies to that tenancy, and/or to future lettings of that property (subject to any exclusions from this 2023 Rent Standard).
- 2.5 Where the application of this 2023 Rent Standard would jeopardise the financial viability of a private registered provider, the regulator may agree, on request from that provider, an exemption to specific requirements of this Rent Standard for a period of time³.
- 2.6 In a situation (such as an insolvency) where there is a mortgagee in possession or receiver in place, or where the registered provider’s stock is sold to a non-registered landlord following intervention by the regulator, neither the mortgagee in possession, nor the receiver, nor the landlord to whom the stock is sold will be bound by this 2023 Rent Standard. Where a Housing Administration Order applies to a registered provider, this 2023 Rent Standard will continue to apply to that provider unless an exemption has been granted by the regulator to that provider.

³ Further guidance on providers requesting an exemption can be found at <https://www.gov.uk/government/publications/rent-standard/making-a-formal-application-for-an-exemption-to-the-rent-standard-from-1-april-2020>. Arrangements for local authorities are outlined in “Local Authority Guidance for formal applications to disapply government rent policy”.

3. Specific expectations

- 3.1 Registered providers must comply in full with all the requirements and expectations set out in this 2023 Rent Standard. They must additionally comply with all the requirements and expectations of the Rent Policy Statement on the setting, increase and decrease of rents and service charges.

Social rent

- 3.2 Where accommodation is not affordable rent housing (see 3.8 – 3.9 below), the maximum weekly rent for a tenant who is granted a tenancy of the accommodation for the first time is formula rent. Formula rents are exclusive of any service charges.
- 3.3 The formula rent of accommodation is found in accordance with the method set out in paragraphs 2.2 to 2.7 of the Rent Policy Statement. The rent set may include an upwards tolerance – “Rent Flexibility” – of 5% of formula rent (on the basis the accommodation is not supported housing).
- 3.4 As set out in paragraphs 2.8 and 2.9 of the Rent Policy Statement, formula rent is subject to the rent cap. The rent cap for 2023-24 is determined in accordance with paragraph 11 of Appendix A to the Rent Policy Statement.
- 3.5 For a rent period that begins in the 12 months from 1 April 2023 to 31 March 2024 the weekly rent of any existing tenant may not be increased by more than:
- CPI⁴ + 1% in any year; or
 - if the tenant’s rent exceeds the rent flexibility level, CPI in any year,
- subject to such weekly rents not increasing by more than 7% in any year.

Fair rent

- 3.6 In the case of tenancies subject to fair rent protection, the maximum weekly rent is the lower of the fair rent set by the Rent Officer and formula rent (subject to both the rent caps and the rent flexibility level).
- 3.7 Registered providers may not increase the rent of a tenant with fair rent protection by more than CPI + 1% in any year, subject to weekly rents not increasing by more than 7% in any year for a rent period that begins in the 12 months from 1 April 2023 to 31 March 2024 (even if the tenant’s rent is below the formula rent level and the maximum fair rent is increased by more than that amount).

⁴ CPI, where mentioned, is the Consumer Price Index rate published by the Office for National Statistics for September of the preceding financial year.

Affordable rent housing

- 3.8 Affordable rent may only be charged where the property in question is provided by:
- a. a registered provider pursuant to a housing supply delivery agreement between that provider and Homes England⁵ or the Greater London Authority and the accommodation is permitted by that agreement to be let at an affordable rent; or
 - b. a registered provider pursuant to an agreement between a local authority and the Secretary of State and the accommodation is permitted by that agreement to be let at an affordable rent; or
 - c. a local authority, and the Secretary of State, Homes England or the Greater London Authority has agreed that it is appropriate for the accommodation to be let at an affordable rent.
- 3.9 In addition to the above, affordable rent may be charged where the property has been acquired by a registered provider and was affordable rent housing when it was acquired.
- 3.10 Where affordable rent is being charged, the maximum rent inclusive of service charge for a new tenant under a new tenancy is 80% of the market rent⁶ for the tenant's accommodation, subject to 3.11 and 3.12 below.
- 3.11 If the formula rent is higher than 80% of the weekly market rent (inclusive of service charges) for the tenant's accommodation, the maximum weekly rent is formula rent which is to be set as in paragraphs 3.2-3.5 above and would be exclusive of service charges.
- 3.12 The rent of an existing affordable rent tenant (including where they have a new tenancy) may not be increased by more than CPI + 1% in any year, subject to such weekly rents not increasing by more than 7% in any year for a rent period that begins in the 12 months from 1 April 2023 to 31 March 2024. 'Existing tenant' in this context means an existing tenant of the specific property concerned. For the avoidance of doubt, the revised rent on re-letting to an existing tenant may only be re-based to 80% of current market value where the resulting rent would be no more than the rent arrived at by a CPI+1% increase subject to a maximum increase of 7%.

⁵ Previously known as the Homes and Communities Agency.

⁶ Market rent means, in relation to accommodation, an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.

Moving between types of rent

- 3.13 Where a tenancy subject to fair rent protection ends and the property is re-let, that new letting should be at Social Rent (or affordable rent where applicable and permitted, see 3.15a below).
- 3.14 On re-letting of a property previously occupied by a high income social tenant, the new letting should be at Social Rent (or affordable rent where applicable and permitted, see 3.16a below).
- 3.15 Social rent properties may not be converted to:
- a. affordable rent (other than in the circumstances set out in chapter 2 of the Rent Policy Statement)
 - b. market rent (other than in the circumstances set out in chapter 4 of the Rent Policy Statement) or
 - c. intermediate rent.
- 3.16 Affordable rent housing must not be converted (including on re-let) to:
- a. market rent (other than in the circumstances set out in chapter 4 of the Rent Policy Statement) or
 - b. intermediate rent.

Local authority information requirements

- 3.17 Local authority registered providers shall communicate with the regulator in an accurate and timely manner. This includes all data and information required by the regulator in respect of compliance with this Standard. Where material issues that relate to non-compliance or potential non-compliance with the Rent Standard are identified by local authorities, they are expected to communicate these to the regulator promptly.



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