

## **MAIDSTONE BOROUGH COUNCIL**

### **MINUTES OF THE EXTRAORDINARY MEETING OF MAIDSTONE BOROUGH COUNCIL HELD AT THE TOWN HALL, HIGH STREET, MAIDSTONE ON 2 SEPTEMBER 2013**

**Present:** Councillor English (The Mayor) and  
Councillors Ash, Barned, Black, Brindle, Burton,  
Butler, Chittenden, Collins, Cox, Daley, Garland,  
Mrs Gibson, Mrs Gooch, Greer, Mrs Grigg, Harwood,  
Mrs Hinder, Hogg, Hotson, Mrs Joy, Lusty, McKay,  
Moriarty, B Mortimer, D Mortimer, Moss, Munford,  
Nelson-Gracie, Newton, Paine, Paterson, Pickett,  
Mrs Ring, Mrs Robertson, Ross, Sams, Springett,  
Mrs Stockell, Thick, Vizzard, Warner, Watson,  
de Wiggondene, J A Wilson, Mrs Wilson and Yates

#### 39. **APOLOGIES FOR ABSENCE**

It was noted that apologies for absence had been received from Councillors Cuming, Mrs Mannering, McLoughlin and Naghi.

#### 40. **DISPENSATIONS**

There were no applications for dispensations.

#### 41. **DISCLOSURES BY MEMBERS AND OFFICERS**

Councillor Munford disclosed an Other Significant Interest in the question to be asked of the Leader of the Council by Mr Doug Smith. He explained that he was a Member of Boughton Monchelsea Parish Council and part of the question related to the payment by the Borough Council of costs incurred by the Parish Council in obtaining Counsel's opinion in relation to the calculation of the five year housing land supply and the treatment of windfalls.

#### 42. **DISCLOSURES OF LOBBYING**

All Members except Councillors Black, McKay, Paterson, Pickett, Warner and Watson stated that they had been lobbied.

#### 43. **EXEMPT ITEMS**

**RESOLVED:** That the items on the agenda be taken in public as proposed.

#### 44. **MINUTES OF THE MEETING HELD ON 24 JULY 2013**

**RESOLVED:** That the Minutes of the meeting held on 24 July 2013 be approved as a correct record and signed.

45. MAYOR'S ANNOUNCEMENTS

The Mayor announced that he wished to:

- Thank all those Members who had attended the Garden Party at Turkey Mill; and
- Remind Members to confirm whether they would be attending the reception for the Grenadier Guards on 24 September 2013.

46. PETITIONS

There were no petitions.

47. ADJOURNMENT OF MEETING

It was moved by the Mayor, seconded by Councillor Garland, that the meeting be adjourned for a short period to enable Members to receive a presentation by the Head of Planning and Development on the five year housing land supply methodology, and to ask questions thereon.

**RESOLVED:** That the meeting be adjourned for a short period to enable Members to receive a presentation by the Head of Planning and Development on the five year housing land supply methodology, and to ask questions thereon.

Following the presentation and questions by Members on the issues raised, the meeting re-convened at 6.55 p.m.

48. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

**Questions to the Leader of the Council**

Mr Paul McCreery asked the following question of the Leader of the Council:

*Is the Borough Council aware that:*

*NPPF, paragraph 48, allows a windfall allowance to be included in the five year supply if there is compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply; and*

*Over the years 2006 to 2011 windfall completions averaged 332 dwellings per annum and were just about half (49%) of all completions; and*

*Based on the last five years figures KCC projected future annual windfall average is 332 dwellings per annum (or 1660 dwellings over five years). Based on the above figures, I agree with the KCC projection which would give Maidstone a supply of 7.5 years; and*

*Based on MBC figures there is a shortfall in the five year supply of 370 dwellings, with no windfalls included. That means that windfall completions would only need to average 74 dwellings per annum (370 dwellings over five years) for Maidstone to achieve a five year supply of housing land and no shortfall; and*

*The most recent completed Strategic Housing Land Availability Assessment (SHLAA) for Maidstone is dated May 2009. Paragraph 6.1.12 (page 41) identifies a windfall capacity of 628 dwellings for 2013-2018 (125 dwellings per annum); and*

*The 2010-2011 Annual Monitoring Report (AMR) at Table 3.2, page 20, predicts windfalls at a rate of 145 dwellings per annum for the years 2022/23 to 2025/26 (725 dwellings for a five year period); and*

*For the last two years 1/4/11 to 31/3/13 Maidstone Borough achieved annual completions averaging 751 dwellings (873 dwellings plus 630 dwellings). This is above the average level of completions for the previous five years. If nil windfalls are available how does the Borough Council explain that Maidstone has continued to achieve such high levels of completions; and*

*Based on the above data Leading Counsel has expressed an opinion that Maidstone has a housing land supply of between 5-7 years and no shortfall; and*

*I have lived and worked in Maidstone as a Chartered Town Planner since 1976 and that based on the above data it is abundantly clear to me without any shadow of doubt that a mistake has been made and that Maidstone does have a five year land supply at this time?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Mr McCreery asked the following supplementary question of the Leader of the Council:

*If Mr Lockhart-Mummery QC is right, based on the facts given in my question, and if the Council is allowed a separate windfall allowance, would you agree that Maidstone does have a five year land supply and no need to immediately release a large number of greenfield sites before they can all be assessed by Members in the production of the new Local Plan?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Mr Ian Ellis asked the following question of the Leader of the Council:

*If there is an investigation and if that investigation concludes that Maidstone Borough Council does in fact have a five year housing land supply will the Borough Council:*

*Accept that the resolution to grant 110 houses at the Map Depot Site, Goudhurst Road, Marden (MA/13/0115) was made in error as a consequence of a legal misdirection (or misdirections); and*

*Accept that the Borough Council should not permit the Map Depot Site because there is a five year land supply (see NPPF paragraph 49) and the site is outwith the Marden village envelope; and*

*NOT sign any draft planning agreements and NOT issue the Map Depot Site residential planning permission during the course of the investigation; and*

*Reconsider the decision on the Map Depot Site after the conclusions of the investigation are made public (as required by planning case law) to consider whether in the light of all material planning considerations available at that future date it would be appropriate to refuse planning permission; and*

*Apologise to Marden Parish Council on the basis that an error had been made in relation to the earlier Map Depot Site decision as a result of a legal misdirection (or misdirections)?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Mr Ellis asked the following supplementary question of the Leader of the Council:

*Is the Leader of the Council aware of the further opinion of Mr Lockhart-Mummery QC on behalf of Boughton Monchelsea Parish Council dated 30 August 2013 in which he is highly critical of the note prepared by the Chief Executive of the Borough Council on the five year housing land supply issue. To quote: "The note strongly confirms my previous advice to the effect that Officers have seriously misunderstood policy in the NPPF, and, subject to a Council meeting on 2 September 2013, are leading Members to misdirect themselves in this important respect." If Leading Counsel for the Parish Council is right, can the Leader of the Council confirm that Maidstone does have a five year housing land supply?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Mr Doug Smith asked the following question of the Leader of the Council:

*If there is an investigation and if that investigation concludes that Maidstone Borough Council does in fact have a five year land supply then:*

*Do you agree it would be possible to refuse the current application for 600 houses at Langley Park on the basis of prematurity; and*

*Can you please confirm that no decision will be taken on Langley Park (and other similarly potentially premature applications) until such time as the five year land supply situation has been reconsidered by the Borough Council as a result of the investigation; and*

*Would you agree that if a planning permission on the Langley Park application is issued and the decision is subsequently successfully challenged in the Courts and if that results in the Borough Council having to revoke the grant of planning permission and award compensation to the applicant (as normally happens in such cases) the individual Councillors in this room could be liable to personal surcharge as a result of continuing with a course of action when they were aware of an opinion from Leading Counsel to the effect that the course of action could potentially be subsequently challenged in the Courts because it has been made as a result of legal misdirection or misdirections; and*

*Will the Borough Council pay the reasonable costs of Boughton Monchelsea Parish Council arising from the production of the legal opinion which brought the legal misdirection (or misdirections) to light?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Mr Smith asked the following supplementary question of the Leader of the Council:

*Due to the complexity of this issue, and the fact that the Borough Council's own advice from Counsel was circulated at 6.00 p.m. this evening, do you agree that a proper investigation is required?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Note: Having disclosed an Other Significant Interest in Mr Smith's question, Councillor Munford left the meeting whilst Mr Smith's questions were put and answered.

Ms Sara Evans asked the following question of the Leader of the Council:

*Is the Borough Council aware and does it accept the definition of windfall sites contained in the Glossary (Annex 2) to National Planning Policy Framework and on that basis if the planning application for 110 dwellings on the Map Depot Site, Goudhurst Road, Marden (MA/13/0115) were to be permitted would it be a windfall site?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

Ms Evans asked the following supplementary question of the Leader of the Council:

*Given the complexity of this matter and in view of the differing opinions that are circulating, and some as late as 6.00 p.m. this evening, do you agree that an independent body of Members should investigate the situation without time constraints and with all available opinions to hand and the ability to seek advice from experts including Boughton Monchelsea's Counsel who is pre-eminent in his field before the Members who must be satisfied one way or the other make their decision?*

The Leader of the Council responded to the question.

Councillor Mrs Wilson, the Leader of the Opposition, and Councillor Mrs Gooch, the Leader of the Independent Group, then responded to the question.

To listen to the responses to these questions, please follow this link:

<http://webcasts.umcdn.com/mbc161/interface>

#### 49. QUESTIONS FROM MEMBERS OF THE COUNCIL

There were no questions from Members of the Council.

#### 50. NOTICE OF MOTION - FIVE YEAR HOUSING LAND SUPPLY

It was moved by Councillor Munford, seconded by Councillor Newton, that the following motion be adopted by the Council:

In light of the fact that Boughton Monchelsea Parish Council has obtained Leading Counsel's Opinion which states that:

1. Maidstone Borough Council does have between a 5-7 years land supply; and
2. Members were misdirected by using advice in the now cancelled PPS3 instead of the quite different advice contained in the NPPF and that if this advice was used in determination of planning applications, (to the effect that there is a lack of a five year supply), this would be a legal misdirection; and
3. The twin tests of paragraph 48 of the NPPF relating to windfall sites have been met and that windfall sites have consistently become available in the local area, and the clear evidence is that they will continue to provide a reliable (and indeed significant) source of supply; and
4. Members have been given information regarding the Langley Park Farm development which was a misdirection and misleading, and that any planning permission granted based on this advice would be liable to be quashed in the courts as it is clearly a departure from the Local Plan.

It is agreed that:

1. With some urgency, an all party investigation is carried out by Members to address the situation where we (the Members) are being given unsound advice (in the opinion of Leading Counsel) and that the investigation team has delegated powers, if necessary, to seek a further opinion from Counsel on this matter.
2. The investigation team should report back to full Council with its recommendations for future actions to be taken by this Council regarding this matter.

Amendment moved by the Mayor, seconded by Councillor Garland, that the motion be deleted and the following inserted:

The issues of housing targets and how they are to be achieved in the short and long term futures are complex and of significant public interest.

It is therefore imperative that all the key stakeholders, in particular elected Members, the Maidstone community and the house building industry have confidence in the Council's housing policies, assessment of need and supply, and monitoring arrangements.

To confirm and make transparent the soundness of the advice given by Officers to Cabinet and Planning Committee under the terms of the NPPF relating to the construction of the five year land supply, it is agreed that:

1. Elected Members are provided with the opportunity to both scrutinise the methodology and judgements that need to be made in calculating the five year housing land supply through Planning, Transport and Development Overview and Scrutiny Committee.

2. The issues to be considered at a single item agenda of the Planning, Transport and Development Overview and Scrutiny Committee on 17 September 2013 and Overview and Scrutiny Committee should report its findings to Full Council as soon as practicable and in any case should report the position it has reached to the Full Council scheduled for 18 September 2013.
3. In the meantime Officers should continue to keep the five year housing land supply under regular review in line with the requirements of the NPPF advising the Cabinet Member for Planning, Transport and Development of any incremental changes and reporting to Cabinet when there is a need to consider significant changes in the housing target or land supply.

AMENDMENT CARRIED

The substantive motion was then put to the vote.

SUBSTANTIVE MOTION CARRIED

**RESOLVED:** That:

The issues of housing targets and how they are to be achieved in the short and long term futures are complex and of significant public interest.

It is therefore imperative that all the key stakeholders, in particular elected Members, the Maidstone community and the house building industry have confidence in the Council's housing policies, assessment of need and supply, and monitoring arrangements.

To confirm and make transparent the soundness of the advice given by Officers to Cabinet and Planning Committee under the terms of the NPPF relating to the construction of the five year land supply, it is agreed that:

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3. In the meantime Officers should continue to keep the five year housing land supply under regular review in line with the requirements of the NPPF advising the Cabinet Member for Planning, Transport and Development of any incremental changes and reporting to Cabinet when there is a need to consider significant changes in the housing target or land supply.



51. DURATION OF MEETING

6.30 p.m. to 8.15 p.m.