

You are hereby summoned to attend an extraordinary meeting of the

MAIDSTONE BOROUGH COUNCIL



Date: Monday 14 October 2013

Time: 6.30 p.m.

**Venue: Council Chamber, Sessions
House, County Hall, Maidstone**

Membership:

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

Continued Over/:

Issued on 4 October 2013

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Alison Broom

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

1. Apologies for Absence
2. Dispensations (if any)
3. Disclosures by Members and Officers
4. Disclosures of Lobbying
5. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
6. Minutes of the meeting of the Borough Council held on 18 September 2013 1 - 7
7. Mayor's Announcements
8. Petitions
9. Question and Answer Session for Members of the Public
10. Questions from Members of the Council to the
 - (a) Leader of the Council
 - (b) Cabinet Members
 - (c) Chairmen of Overview and Scrutiny Committees
 - (d) Chairmen of other Committees
11. Report of the Planning, Transport and Development Overview and Scrutiny Committee held on 26 September 2013 - Response to the Instruction of Full Council, 2 September 2013 8 - 61

MAIDSTONE BOROUGH COUNCIL

MINUTES OF THE MEETING OF MAIDSTONE BOROUGH COUNCIL **HELD AT THE TOWN HALL, HIGH STREET, MAIDSTONE ON** **18 SEPTEMBER 2013**

Present: Councillor English (The Mayor) and
Councillors Ash, Barned, Beerling, Black,
Mrs Blackmore, Brindle, Burton, Butler, Collins, Cox,
Cuming, Daley, Garland, Mrs Gibson, Mrs Gooch,
Greer, Mrs Grigg, Hogg, Hotson, Mrs Joy, Lusty,
Mrs Mannering, McLoughlin, Moriarty, B Mortimer,
D Mortimer, Naghi, Newton, Paine, Parvin,
Mrs Parvin, Mrs Ring, Mrs Robertson, Ross, Sams,
Thick, Vizzard, Warner, Watson, de Wiggondene,
J.A. Wilson, Mrs Wilson and Yates

52. **PRAYERS**

Prayers were said by Bill Miller, the Minister of Knightrider Street Baptist Church.

53. **APOLOGIES FOR ABSENCE**

It was noted that apologies for absence had been received from Councillors Chittenden, Harwood, Mrs Hinder, McKay, Moss, Munford, Nelson-Gracie, Paterson, Pickett, Springett and Mrs Stockell.

54. **DISPENSATIONS**

There were no applications for dispensations.

55. **DISCLOSURES BY MEMBERS AND OFFICERS**

There were no disclosures by Members or Officers.

56. **DISCLOSURES OF LOBBYING**

All Members except Councillors Black and Watson stated that they had been lobbied.

57. **EXEMPT ITEMS**

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

58. MINUTES OF THE EXTRAORDINARY MEETING OF THE BOROUGH COUNCIL
HELD ON 2 SEPTEMBER 2013

RESOLVED: That the Minutes of the extraordinary meeting of the Borough Council held on 2 September 2013 be approved as a correct record and signed.

59. MAYOR'S ANNOUNCEMENTS

The Mayor announced that he had been pleased to attend a large number of events recently, including a cheese and wine tasting charity event in Staplehurst and the unveiling of a new statue in the forecourt of Maidstone Museum. The statue, depicting a soldier of the Queen's Own Royal West Kent Regiment on patrol in Malaya, was the latest addition to the Borough's public art collection, and he would like to thank Councillors Newton and Greer for their involvement in the project.

60. PETITIONS

There were no petitions.

61. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

Questions to the Leader of the Council

Mrs Cheryl Taylor-Maggio asked the following question of the Leader of the Council:

I understand that the Council's housing land supply as of 1 April 2013 (without any windfall allowance included) is a shortfall of 370 dwellings. Please explain what possible justification the Council could have for the release of a massive 1650 dwellings on greenfield sites as a policy response to such a relatively modest shortfall.

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.

Mrs Taylor-Maggio asked the following supplementary question of the Leader of the Council:

Can the Council please confirm it will not issue any planning permissions on greenfield sites (including 110 dwellings at The Map Depot Site, Marden and 600 dwellings at Langley Park, Boughton Monchelsea/Langley Parishes), until the investigation by Overview and Scrutiny has been concluded and the Council has reviewed its policy on the premature release of strategic greenfield sites as a result?

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

Is the Council aware that it is the only District Council in Kent which both does not have a five year housing land supply and does not incorporate a windfall allowance in the calculation, as allowed for in government policy in NPPF, para 48?

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:

Is the Leader of the Council aware that in paragraph 5.3.7 of the report to the meeting of the Planning Committee tomorrow relating to application MA/13/0682 for a single greenfield dwelling at Knaves Acre, Headcorn, the land supply total is given as 3.9 years whereas the up to date figure agreed last night at the meeting of the Overview and Scrutiny Committee was 4.2 years?

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.

In accordance with paragraph 12.7 of the Council Procedure Rules, the Mayor asked the following question of the Leader of the Council on behalf of Mrs Lorna McCreery who was unable to attend the meeting due to ill health:

Is the Leader aware that the latest new draft National Planning Guidance on the planning portal states that 'Plan makers should not need to rely on windfall allowances in years 6-15' and is the Leader aware that this is the direct opposite of the advice contained in the March 13 report to Cabinet which stated '..... national guidance allows the inclusion of a windfall 1 site allowance for the latter years of the plan period.' and will the Leader advise what action he proposes to take as a result of this misdirection?

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:

Can the Leader of the Council point out to me a document in which the Council has taken cognisance of the Town and Country Planning (General Permitted Development) Amendment (England) Order 2013 which permits the change of use from Office (B1) to Residential Use (C3) without planning permission and its potential contribution to housing supply until 30 May 2016?

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:

The Planning Committee, at its meeting held on 16 May 2013, gave delegated powers to the Head of Planning and Development to grant planning permission for the conversion of Concorde House, London Road, an office building, to 73 residential dwellings. This was prior to the legislation I just referred to. Has this development been included in the five year 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.

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

<http://webcasts.umcdn.com/mbc078/interface>

Note: A question from Mr Mike FitzGerald was included in the composite list of questions due to a misunderstanding. Mr FitzGerald was not present at the meeting.

62. QUESTIONS FROM MEMBERS OF THE COUNCIL

There were no questions from Members of the Council.

63. CURRENT ISSUES - REPORT OF THE LEADER OF THE COUNCIL, RESPONSE OF THE GROUP LEADERS AND QUESTIONS FROM COUNCIL MEMBERS

There was no report from the Leader of the Council on this occasion.

64. ORAL REPORT OF THE CABINET HELD ON 11 SEPTEMBER 2013

There was no report from the Cabinet on this occasion.

65. ORAL REPORT OF THE AUDIT COMMITTEE HELD ON 16 SEPTEMBER 2013

There was no report from the Audit Committee on this occasion.

66. ORAL REPORT OF THE PLANNING, TRANSPORT AND DEVELOPMENT OVERVIEW AND SCRUTINY COMMITTEE HELD ON 17 SEPTEMBER 2013

Councillor Collins, the Chairman of the Planning, Transport and Development Overview and Scrutiny Committee, presented the following progress report arising from the Committee's investigation of the methodology and judgements that need to be made in calculating the five year housing land supply:

"The following motion was agreed at full Council:

"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."

As you know the Planning, Transport and Development Overview and Scrutiny Committee met last night and we called as witnesses Rob Jarman, Sue Whiteside, Cllr Garland, Cllr Paine and representatives from Boughton Monchelsea: Cllr Doug Smith, Cllr Sara Evans and Mr Paul McCreery. It should be noted that Cllr Paine, Cllr Smith and Mrs Whiteside did not speak at the meeting.

Having heard evidence from the witnesses, the Committee was not satisfied that any of the witnesses had yet sufficiently evidenced their methodology and judgements regarding windfall sites in relation to the 5 year housing land supply.

The methodology in relation to the SHLAA appears to have been rigorously applied.

The Committee has raised the following concerns to be investigated at a further meeting:

- The statement was made at the meeting "That if a local authority goes to great lengths to quantify the unexpected windfall contribution, then it should be reasonable to factor in a discount to account for the non-completion of planning permissions" – the Committee seeks to find out what the consequences of this would be and to obtain greater clarity.
- Endeavour to find other Councils and invite Officers where appropriate that have included windfall sites in their 5 year housing land supply, and had this tested and since the NPPF was introduced, in order to give a comparison, taking into account Maidstone's unique position.
- How the possibility of windfall sites has been tested and evaluated in the judgement currently made.

The Committee recognises the urgency of this matter and will be aiming to conclude as soon as possible to report to full Council and if necessary an extraordinary meeting will be called."

It was moved by the Mayor, seconded by Councillor Mrs Wilson, that the progress report from the Planning, Transport and Development Overview and Scrutiny Committee be noted.

RESOLVED: That the progress report arising from the Planning, Transport and Development Overview and Scrutiny Committee's investigation of the methodology and judgements that need to be made in calculating the five year housing land supply be noted.

67. REPORT OF THE HEAD OF POLICY AND COMMUNICATIONS - OVERVIEW AND SCRUTINY ANNUAL REPORTS 2011-12 AND 2012-13

It was moved by Councillor Mrs Gooch, seconded by Councillor Mrs Blackmore, that the Overview and Scrutiny Annual Reports 2011-12 and 2012-13 be noted.

In response to comments by a Member, the Head of Policy and Communications undertook to include reference in the 2011-12 Annual Report to the relevance of the five photographs on the cover.

RESOLVED: That the Overview and Scrutiny Annual Reports 2011-12 and 2012-13 be noted.

68. REPORT OF THE HEAD OF POLICY AND COMMUNICATIONS - APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES

It was moved by the Mayor, seconded by Councillor Thick, that the recommendation contained in the report of the Head of Policy and Communications relating to the appointment of Substitute Members of Committees be approved.

RESOLVED: That the following changes be approved to reflect the wishes of the Leader of the Independent Group:

Strategic Leadership and Corporate Services Overview and Scrutiny Committee

Substitute Members

Add Councillors Moriarty and Sams

Economic and Commercial Development Overview and Scrutiny Committee

Substitute Members

Add Councillors Munford and Sams

Planning, Transport and Development Overview and Scrutiny Committee

Substitute Members

Add Councillors Mrs Gooch and Sams

Community, Leisure Services and Environment Overview and Scrutiny Committee

Substitute Members

Add Councillors Moriarty and Sams

Maidstone Joint Transportation Board

Substitute Members

Add Councillors Mrs Gooch and Sams

69. DURATION OF MEETING

6.30 p.m. to 7.27 p.m.

Agenda Item 11

MAIDSTONE BOROUGH COUNCIL

COUNCIL

14 OCTOBER 2013

REPORT OF PLANNING, TRANSPORT AND DEVELOPMENT OVERVIEW AND SCRUTINY COMMITTEE

Report prepared by Orla Sweeney

Response to the instruction of Full Council to the Planning, Transport and Development Overview and Scrutiny Committee, 2 September 2013.

1.1 Issue for Decision

1.1.1 To consider the Planning, Transport and Development Overview and Scrutiny Committee's findings in response to the instruction at **Appendix A.**

1.2 Recommendation of Planning, Transport and Development Overview and Scrutiny Committee

1.2.1 That the Planning, Transport and Development Overview and Scrutiny Committee's recommendations to Full Council be considered in response to its instruction on 2 September 2013.

1.2.2 The Planning Transport and Development Overview and Scrutiny Committee, **recommends the Council that:**

1. It endorse the methodology and judgments made thus far for calculating the five year housing land supply;
2. The Planning, Transport and Development Overview and Scrutiny Committee be updated at a midyear point on permitted planning applications, windfall sites and non-completions to assess where we are with regards to the five year housing land supply; and
3. Officers be instructed to investigate urgently what can be done to protect any site from inappropriate development whilst we do not have a five year housing land supply.

1.3 Reasons for Recommendation

- 1.3.1 On 2 September 2013 an extraordinary meeting of the Maidstone Borough Council was held to consider a motion.
- 1.3.2 As a result of this meeting Maidstone Borough Council made a detailed 3 part instruction (**Appendix A**). Part 1 and Part 2 of this instruction were to the Planning, Transport and Development Overview and Scrutiny Committee as follows:

“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.

The issues to be considered at a single item agenda of the Planning, Transport and Development Overview and Scrutiny Committee on 17th September 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 18th September 2013.”

- 1.3.3 Following its meeting on 17th September the Chairman of the Planning Transport and Development Overview and Scrutiny updated full Council on the Committee’s findings so far on 18th September. The statement, in full, is attached at **Appendix B**.
- 1.3.4 The Statement to Full Council outlined the Committee’s position and its proposals for a second meeting.
- 1.3.5 A second, extraordinary, meeting was held on 26 September. Authority was given to the Chairman and Vice-Chairman by the Committee to scope the meeting and make a witness selection.
- 1.3.6 Two representatives from Boughton Monchelsea Parish Council were invited. They were specifically requested to provide background evidence to substantiate paragraph 5 c in the document titled ‘Boughton Monchelsea Parish Council, Maidstone Borough Council, Housing Land Supply, Note of Advice’ which had been provided in evidence. The paragraph read:

“5. Turning to the substance, it is worth emphasising some important facts:

c. There is likewise the clearest evidence, based on past trends, that windfalls will likewise arise in the next 5-year period, at a rate again in excess of 300 year (332 dpa or 1660 in total).”

- 1.3.7 Boughton Monchelsea Parish Council provided an evidence pack which was included in the agenda for the meeting (attached at **Appendix C**).
- 1.3.8 Councillor Ian Ellis, acting Chairman of Boughton Parish Council and Mr Nicholson, their Planning Advisor were invited to give evidence.
- 1.3.9 The Committee was referred to Boughton Monchelsea's report in the agenda papers (**Appendix C**) and the methodologies put forward by PMC Planning and Tunbridge Wells Borough Council.
- 1.3.10 Mr Nicholson informed the Committee that a windfall allowance could be included in the Council's five year housing land supply. The Government required evidence of a consistent supply and an expectation of a reliable source in the future. He told the Committee that Maidstone borough Council did not dispute this as they had included a windfall supply in their 20 year housing trajectory.
- 1.3.11 It was explained that the methodology to be put forward as evidence was a combination of PMC Planning's methodology which was based on a 'sectoral approach' and Tunbridge Wells's methodology which was to take a trend and moderate that figure by applying a 60% discount.
- 1.3.12 The Committee was referred to the figure of 1660 in table PMC1 from PMC Planning. This windfall allowance was based past on past trends for the period 2001-2006 in Maidstone. A 60% discount was applied to the figure of 1660, leaving 660 housing units which the Committee was told was only marginally above Maidstone's windfall yield for the last year, of 630 housing units. The Committee was informed that 660 housing units would meet the Council's housing short fall of 370 and provide an oversupply for its five year housing land supply calculation.
- 1.3.13 Mr Nicholson concluded his evidence to the Committee by stating that that there was no justification in lifting the embargo on strategic sites. By adopting the officer's approach and ignoring a windfall allocation the Council would be accelerating its use of a scarce resource.
- 1.3.14 The Committee, in its questioning, highlighted the need to include a figure for non-completed planning applications in a methodology, if a windfall allocation was to be included the impact that this would have an affect on the five year housing land supply calculation. If, for example, a 5% discount was applied it raised concerns as to whether this would in fact leave the Council in a worse position overall.
- 1.3.15 The Committee focused on the terminology that had been used when describing windfall such as 'impossible to predict'. Some Members felt

that this suggested a lack of certainty and that it was certainty that they were looking for in their scrutiny of methodology.

- 1.3.16 Rob Jarman, Head of Planning and Development and Emma Boshell, Planning Officer, Spatial Planning were invited to provide evidence of Maidstone Borough Council's methodology and judgements in relation to future trends which had resulted in its decision not to include windfall sites in its five year housing land supply. The presentation is attached at **Appendix D**.
- 1.3.17 Mr Jarman confirmed that Maidstone Borough Council had included a windfall allowance in its 20 year housing trajectory
- 1.3.18 Mr Jarman presented two tables at the conclusion of his presentation, Scenario 1 and Scenario 2 (**Appendix E**). Scenario 1 was Maidstone Borough Council's current methodology in calculation its five year housing land supply and Scenario 2 showed the option for an inclusion of a pure windfall allowance and non-implementation rate in its methodology. The result of including a pure windfall allowance and a non-implementation rate as part of that methodology was shown; the Council's Housing Land Supply would be reduced from 4.2 years to 4.1 years.
- 1.3.19 It was confirmed to the Committee that every windfall site that come forward was included in the Council's land supply, every permission down to a single dwelling, once planning permission had been granted.
- 1.3.20 Careful monitoring was undertaken throughout the year. On 1st April each year the number of windfall sites that had come forward and resulted in a planning permission would be calculated along with a deduction for the number of 'non-completed' applications.
- 1.3.22 The need for accuracy was stressed to the Committee and was illustrated by Maidstone Borough Council's approach to including a windfall site, once planning permission had been granted.
- 1.3.23 The Committee felt that a mid year review, ahead of 1st April 2014, of the Council's current permitted planning applications, windfall sites and non-completions would help provide an accurate indication of where the Council was with regards to its five year housing land supply currently.
- 1.3.24 In addition to these witnesses the Chairman and Vice-Chairman contacted the Planning Advisory Service (PAS) for an independent planning advisor. PAS sent a request on the Committee's behalf to its suppliers but there was no response to this.

- 1.3.25 The Chairman and Vice-Chairman sought a witness from Ashford Borough Council to provide a peer perspective, as advocated by PAS and owing to its excellent reputation. Unfortunately Ashford Council did not fulfil the criteria set as it does not have a tested five year housing land supply. It is currently undertaking its Strategic Housing Land Allocation Assessment (SHLAA).
- 1.3.26 In lieu of an independent planning advisor and a respected peer, a strategic planner from the Home Builders Federation (HBF) attended as a witness to provide an alternative perspective.
- 1.3.27 Mr Stevens explained that the HBF was a trade organisation that represented a wide range of organisations. As a Strategic Planner he had been involved with approximately thirty Local Plans across the country and eighteen under the new Government legislation.
- 1.3.28 He provided the Committee with his opinion on the inclusion of windfall, making the following points for its consideration:
- The Council had undertaken a robust SHLAA, the results of which would feed into its five year housing land supply;
 - Paragraph 48 of the NPPF guidelines did state that a windfall allowance could be included where there was 'compelling evidence' to do so;
 - When the Local Plan came forward for examination by the Planning Inspectorate it would be looking at the deliverability of development, adding that the NPPF placed greater emphasis on this, especially in the first five years following its adoption;
 - He explained that the risk with including a windfall allocation was that it could materialise but may not; and
 - The risk was further emphasised by running the possibility of losing at appeal if unable to convince the inspector that a windfall allocation was deliverable.
- 1.3.29 Mr Stevens told the Committee that by not basing the housing land supply on certainty they were selling residents short. A windfall allowance provided less certainty as to where sites would be.
- 1.3.30 Members raised questions about Greenfield sites and the danger of not including a windfall allocation in order to protect these sites. Mr Stevens responded by explaining that the five year housing land supply had to demonstrate a deliverable, rolling five year housing land supply. If a site was sustainable it would have to come forward and it was better to be in a position of certainty overall.
- 1.4 Alternative Action and why not Recommended

1.4.1 The Council is asked to consider the Planning, Transport and Development Overview and Scrutiny Committee's report and recommendations in order to make a decision as appropriate.

1.5 Impact on Corporate Objectives

1.5.1 None.

1.6 Risk Management

1.6.1 There are risks associated with the Council considering the Planning, Transport and Development Overview and Scrutiny Committee's report and recommendations. Council Members are asked to consider these risks when determining their response to the recommendations.

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 we propose 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 17th September 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 18th September 2013.
3. In the meantime that 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.

Position of the Planning Transport and Development Overview and Scrutiny Committee following its meeting on 17 September 2013 in response to the instruction of Council, 2 September 2013.

The following motion was agreed at full council:

"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."

As you know the Planning Transport and Development Overview and Scrutiny Committee met last night and we called as witnesses Rob Jarman, Sue Whiteside, Cllr Garland, Cllr Paine and representatives from Boughton Monchelsea Cllr Doug Smith, Cllr Sara Evans and Mr Paul McCreery. It should be noted that Cllr Paine, Cllr Smith and Mrs Whiteside did not speak at the meeting.

Having heard evidence from the witnesses, the Committee was not satisfied that any of the witnesses had yet sufficiently evidenced their methodology and judgements regarding windfall sites in relation to the 5 year housing land supply.

The methodology in relation to the SHLAA appears to have been rigorously applied.

The Committee have raised the following concerns to be investigated at a further meeting:

- The statement was made at the meeting "That if a local authority goes to great lengths to quantify the unexpected windfall contribution, then it should be reasonable to factor in a discount to account for the non-completion of planning permissions" – the committee seeks to find out what the consequences of this would be and to obtain greater clarity.
- Endeavour to find other councils and invite officers where appropriate that have included windfall sites in their 5 year housing land supply, and had this tested and since the NPPF was introduced, in order to give a comparison, taking into account Maidstone's unique position.
- How the possibility of windfall sites has been tested and evaluated in the judgement currently made.

The Committee recognises the urgency of this matter and will be aiming to conclude as soon as possible to report to full Council and if necessary an extraordinary meeting will be called.

MAIDSTONE BOROUGH COUCIL

The use of a windfall allowance in the
calculation of the five year housing
land supply.

A REPORT BY PMC **Planning**

MAIDSTONE BOROUGH COUNCIL

The use of a windfall allowance in the
calculation of the five year housing
land supply.

A REPORT BY PIVIC Planning

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Appendix One: ASHFORD BOROUGH COUNCIL

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Appendix Three: APPEAL DECISION REFERENCE

APP/Q3630/A/13/2192120

DATED 17 JULY 2013

Table PMC 1

Table PMC 2

1.0 INTRODUCTION

1.1 National Planning Policy Guidance (NPPF) was introduced in March 2012 and changed the policy framework for the release of housing land.

1.2 Paragraph 49 NPPF effectively introduced a clause which means that a local planning authority (LPA) may have to grant emergency planning permissions on greenfield sites if it cannot demonstrate a five year supply of deliverable housing sites.

1.3 NPPF divides national policy on housing supply into two parts.

1.4 NPPF paragraph 47 sets out the first part of policy for specific deliverable identified housing sites.

1.5 NPPF paragraph 48 allows the LPA to make an additional allowance for forecast windfall sites in the supply calculations for the first 5 years of the plan. It states :

"local planning authorities may make an additional allowance for forecast windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens."

1.6 In a Report to Cabinet on 13th March 2013 Maidstone Borough Council was wrongly advised that a windfall allowance could only be included for the latter years of the plan period i.e. the years after the first five. Boughton Monchelsea Parish Council (BMPC) referred that advice to a pre-eminent planning barrister, Christopher Lockhart-Mummery (CLM). CLM has given three written opinions which clearly state that Maidstone Borough Council officers have misunderstood the new policy to the extent that any planning permission granted as a result of that advice would be a Legal Misdirection, which could subsequently be reversed in the Courts.

1.7 Maidstone Borough Council has also received a written opinion from their Barrister, Megan Thomas. The final sentence of this opinion reads:

"It is possible to include an allowance, but in this instance officers were not convinced there was the compelling evidence to do so for the 5 year housing supply calculations."

There are, therefore, four written legal opinions in existence advising MBC that it may include a windfall allowance and none taking the contrary view.

1.8 The sites currently proposed for emergency release in advance of the proper Local Plan process are:

Bridge Nursery (SS1a)	165
East of Hermitage Lane (SS1b)	600
Langley Park (SS2a)	600
North of Sutton Road (SS2b)	285
	1650

1.9 The Maidstone Borough Council Committee Report into the Map Depot Site, Goudhurst Road, Marden (MA/13/0115) states at paragraph 5.3.15 (pages 44-45) that the shortfall in the 5 year housing land supply in Maidstone at 1st April 2013 is 370 dwellings.

1.10 Maidstone Officers have chosen not to include a separate allowance for windfall sites in the calculation of 5 year housing land supply as they are allowed to do by NPPF paragraph 48.

1.11 Based on historic delivery rates of windfalls (332 dwellings per annum) supplied by I&CC, BMPC concludes Maidstone should make a windfall allowance of 1660 dwellings in the 5 year supply calculation. That approach has been endorsed by CLM and would give Maidstone a surplus of 1290 dwellings in the 5 year housing land supply and no shortfall.

1.12 Maidstone Borough Council has therefore put itself in the position that:

(a) It is not choosing to include a separate allowance for future windfall sites in its 5 year housing land supply giving itself a (very small) shortfall of 370 dwellings rather than the comfortable surplus it would have if it included the forecast provided by I&CC and

(b) As a result of its shortfall of only 370 dwellings (in its own figures) it is proposing the emergency release of at least 1650 dwellings on greenfield sites in advance of full consideration of this issue in the process of the work in producing the new Local Plan for the Borough in the months up to July 2015. If it followed the process the Borough Council would have allowed all Council Members and all Parish Councillors to have had their say in the pattern of release of sites.

1.13 Boughton Monchelsea Parish Council would like Overview and Scrutiny Committee to recommend to Full Council that no large greenfield residential planning permissions should be issued until the results of this investigation can be considered by Members and, if necessary, a change to the policy on Five Year Housing Land Supply be put in place.

1.14 Officers are concerned that an element of double counting may result if a windfall allowance were to be included in the calculation. The extent of this double counting has not been quantified. Boughton Monchelsea Parish Council is concerned that without the inclusion of a windfall allowance a significant degree of under counting will result and consequent harm to policy by the unnecessary early release of a large number of

greenfield sites in advance of consideration of the pattern and quantum of release through the Local Plan process.

1.15 It is inevitable that new windfall sites will continue to materialise. They are sites that accord with policy and when they come forward have to be determined accordingly. A consequence of not including a windfall allowance in the supply figure, is that the number of identified sites which fall to be released in the five year period will be overinflated as a result.

2.0 WINDFALLS

2.1 Across the entire built up fabric of the Borough are sites which may fall to be redeveloped over the next 5 years. These are potential windfall sites. The new Government policy in NPPF (paragraph 48) allows the local planning authority to include an allowance for windfalls in the calculation of the five year housing land supply.

2.2 If all sites had to be identified what would be the purpose of having the separate category of a windfall allowance at paragraph 48 in the NPPF?

2.3 Windfall sites can arise from a variety of sources across the entire built fabric of the Borough. A shop in a terrace on Tonbridge Road may, for example, no longer be viable, and may come up for redevelopment as 2/3 flats.

2.4 Petrol filling stations may no longer be viable and may come up for redevelopment. The surrounding residents may welcome such a change. It is acceptable in policy and may yield 10 or 20 dwellings.

2.5 This process continues across the entire urban area, the rural service centres and other villages large and small.

2.6 It is not possible to predict which particular pub, petrol filling station or small shop unit will become a windfall site over the next five years. We can confidently predict, however, that the sites will continue to fall.

2.7 Over the years 2001/2 to 2005/6 windfalls in Maidstone averaged 261 dwellings per annum (KCC figures).

2.8 Over the next 5 years to 2011 windfalls averaged 332 dwellings per annum (also KCC figures).

2.9 The trend is for an increase of 27%.

2.10 Boughton Monchelsea Parish Council suggests that Members include a windfall allowance of 332 dwellings per annum in the five year land supply calculation. The parish council recognises potential concerns about double counting and therefore suggests a level windfall allowance of 332 dpa with no trend increase.

2.11 I understand a level of reduction (circa 20%) has been applied to windfall allowances in more than one recent appeal decision. (See below)

2.12 The KCC document 'Housing Land supply from unidentified sources (windfalls) report' (December 2008) states at page 4:

f(Monitoring reports for Kent districts now exclude 'windfalls'. However, there are concerns among some local authorities that the exclusion of this element of the land supply creates a misrepresentation of the total supply. Especially as some districts have traditionally had a relatively high contribution from this source."

2.13 Although written some time ago the thrust of the argument that excluding windfalls creates a misrepresentation remains. As a result, at paragraph 7, under the heading 'Future Practice' the report states:

f(Future Practice

Given that windfall land supply does exist. This is substantiated by the small but significant number of dwellings being developed through 'unidentified' planning permissions that are granted each year. Local Authorities are concerned that this element of housing land is not being included in the overall land supply. With that in mind and to obtain a view of the trend in windfalls, these tables have been produced and continue past trends for comparison purposes."

3.1 KENT COUNTY COUNCIL EVIDENCE

3.2 Historic evidence of windfall completions is given at Tables PMC1 and Table PMC 2 which are appended to this report.

3.3 Over the years 2001/2 to 2005/6 windfalls in Maidstone averaged 261 dwellings per annum (KCC figures).

3.4 Over the next 5 years to 2011 windfalls averaged 332 dwellings per annum (also KCC figures).

3.5 The trend is for an increase of 27%

3.6 Boughton Monchelsea Parish Council suggests that Members include a windfall allowance of 332 dwellings per annum in the five year land supply calculation. The parish council recognises potential concerns about double counting and therefore suggests a level windfall allowance of 332 dpa with no trend increase.

3.7 Paul Crick, Director of Planning and Environment, Kent County Council has commented on this matter in a letter, dated 19th September 2013, to Alison Broom, Chief Executive, Maidstone Borough Council.

3.8 He states:-

MBC has a strong track record in meeting considerable elements of its housing need through windfall plots (49% since 2006). To omit historic windfall delivery rates is a fundamental flaw in MBC's calculations and by doing so means that more land is being made available for new housing than needs to be. MBC's approach is therefore not consistent with the NPPF.

3.9 The figure of 332 dwellings is a level future projection of a past trend.

3.10 Planning work is frequently based on a future projection of a past trend, for example population projections. Projections of future retail expenditure are used to calculate future retail floor space requirements. Whilst many of us may not like such projections, Boughton Monchelsea Parish Council believes they are, and sometimes have to be, fundamental to government decision making at all levels.

3.11 The view of Christopher Lockhart-Mummery QC, a leading planning barrister, is:

"it would be utterly perverse not to include an allowance in present circumstances. It might be different if windfalls had run, and were predicted to run, at marginal rates, and/or the evidence for them was flimsy. But here there is firm evidence of substantial supply. Where some 74 dwellings each year would make the 5-year supply a surplus, and there is evidence of supply over 4 times that that, it would in my view be legally unreasonable to exclude this element of supply."

4.0 MAIDSTONE BOROUGH COUNCIL EVIDENCE

- 4.1 Based on MBC figures there is a shortfall in the 5 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 5 year supply of housing land and no shortfall.
- 4.2 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).
- 4.3 The SHLAA is prepared for a broader purpose than just the calculation of five year housing land supply. It is nevertheless a highly material planning consideration that when last viewed by independent consultants for the Borough Council the conclusion was that windfalls, for the 5 year period in question, would run at 125 dwellings per annum. This is some 168% above the minimum requirement of 74 dwellings per annum which would secure a supply.
- 4.4 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).
- 4.5 The AMR also has a broader purpose than five year housing land supply. However this is the most recent prediction of future windfall capacity produced by the Borough Council and as such is also an important material consideration. The prediction accords with the possibility that windfalls will not continue at the current level of 332 dwellings per annum. However, the predicted level of 145 dwellings per annum is some 196% above the minimum requirement of 74 dwellings per annum which would secure a supply.

4.6 For the last two years 1/4/11 to 31/3/13 Maidstone Borough achieved annual completions averaging 751 dwellings (873 dwellings in 2011/12 plus 630 dwellings in 2012/13). This is above the average level of completions for the previous five years. During this time the moratorium on the release of greenfield sites was firmly in place. If nil windfalls are available how could Maidstone have continued to achieve such high levels of completions?

5.1 PLANNING ADVISORY SERVICE (PAS) GUIDANCE

5.2 Members will be aware of advice from PAS dated 2nd August 2013 to develop a robust five year housing land supply methodology.

5.2 PAS state:

"If you have not got an up-to-date deliverable five year housing land supply in place you should take stock of what you do have and seek to fill the gaps. This could include one or more of the following tasks...•

- Develop a robust five year housing land supply methodology.
The methodology should: ensure that the NPPF requirements are followed; take into account appeal cases which refer to flaws in methodologies; and, if considered necessary, be tested by peers in other local authorities.
- Complete your assessment as soon as possible.
The assessment should be undertaken as soon as possible to inform both the development of the Local Plan (and/or completion of the Core Strategy) and decision making on planning applications which can come forward at any time. The five year housing land supply should therefore be a "live" document, updated annually to continually be able to show a deliverable supply. The appeal cases highlighted in this note demonstrate the importance of the five year housing land supply to delivery as well as to plan-making".

Peer Review

5.3 In order to investigate methodologies used by other Councils, PMC Planning contacted District Councils in Kent (apart from Maidstone which was known) by email on 9th September 2013 and again on 10th September 2013. The purpose of the second email was to share and validate preliminary results of the survey.

5.4 Six Councils have a five year land supply and do not currently include a windfall allowance and are either reviewing or considering whether to review their methodology:

CANTERBURY
GRAVESHAM
SEVENOAKS
SHEPWAY
THANET
TONBRIDGE & MALLING

5.5 Four Councils include a windfall allowance and have a five year housing supply:

ASHFORD
DARTFORD
SWALE
TUNBRIDGE WELLS

5.6 One Council, DOVER, includes a windfall allowance and does not have a five year land supply.

5.7 Details of the situation at Ashford are in Appendix One to this Report. The five year housing land supply position at Ashford was considered at a Public Examination of a DPD last year. The Inspector commented:

"I have also noted the limitation imposed by the relatively small amount of brownfield sites within the USIDPD area (para 4.4), and the need to carefully control the release of greenfield locations on the edge of the town (para 4.5). Taking all of these factors into account, and recognising that there is capacity both outside of the specific allocations and through windfalls – which the NPPF allows for in the five year supply (para 48) – it appears to me that it can be shown that there is an adequate five year supply of housing land to meet the NPPF requirement."

5.8 Tunbridge Wells have a policy requirement to provide 600 dwellings from April 2006 to March 2026. For July 2013 some 82 dwellings were included in the supply as a windfall allowance giving a total supply of 5.0 years.

5.9 Extracts from the TWBC Report 'Housing Land Supply: Making a Windfall Allowance' are to be found at Appendix Two to this Report.

Appeal Decisions

5.10 The issue of a windfall allowance was considered at an appeal in Runnymede, Surrey as recently as 11th June 2013. A copy of the decision letter is to be found at Appendix Three to this Report. At paragraph 11 the Inspector makes the following points:-

(Appeal Decision APP/Q3630/A/13/2192120)

5.10.1 "The NPPF allows inclusion of windfall sites where there is compelling evidence that they have consistently become available, and will continue to do so. In this instance, the allocation of 41.2 units per annum is based on the average windfall delivery over the previous five years, excluding garden sites."

5.10.2 There is no allowance for under delivery, although a discount of 50% is mentioned as providing a robust assessment.

5.10.3 Reference is made to a 2012 appeal decision in Somerset which noted that the supply of windfall sites may diminish, and that a more moderate, reduced allowance may be realistic.

5.10.4 The Inspector concludes at paragraph 11:

"On the other hand, the Council's historic figures do not show a marked downward trend and, whilst there is variability year by year, if the highest and lowest are excluded the average remains substantially the same. Some margin would be justified in order to achieve realistic figures, but a 50% decrease would produce a level that has been well exceeded in all but one of the preceding five years. The appeal referred to above suggested a moderate reduction. In this case, a similar discount to the 20% applied by the Council to deliverable sites without planning permission, for instance, would achieve a conservative approach without creating an unrealistically low estimate."

5.10.5 The Inspector adopts a 20% reduction in the historic windfall delivery rate, and concludes Runnymede demonstrated a 5.25 year supply. He found that the release of the site was not necessary to meet housing needs. Accordingly he dismisses the appeal and refuses planning permission.

5.11 As can be seen from 5.10.1 above in the Runnymede case, garden sites separated out and excluded from historic windfall delivery rates. In the case of Maidstone there is no separate breakdown for garden land it would have to be broken down manually. It would appear that this element of the work has yet to be completed.

5.12 If Members are concerned that windfalls in Maidstone cannot be relied upon to continue at the very high levels achieved in the recent past then they could adopt the discounting approach recommended by Mr Crane, the Inspector at Runnymede. If the rate of 332 dwellings per annum, and a discount rate of 20% is applied, the windfall allowance would be 266 dwellings per annum.

5.13 Based on their experience of the housing market in Maidstone, Members might be more comfortable moving forward with a windfall allowance of 266 dwellings per annum, which would be 1330 dwellings over the entire five year period.

6.1 DCLG GUIDANCE

6.2 Government guidance on determining the potential of windfall is contained in the report 'Strategic Housing Land Availability Assessments: Practice Guidance'. Although this document dates from July 2007, it has not been replaced. The following comments on how to calculate a windfall allowance are relevant today.

"Where a windfall allowance can be justified, this should be based on an estimate of the amount of housing that could be delivered in the area on land that has not been identified in the list of deliverable/developable sites, or as part of broad locations for housing development. One way to determine a realistic windfall allowance is to estimate the housing potential from each likely source of land for housing, as the rate will be different between them. One method to estimate potential from each source is by calculating the average annual completion rate from the source, taking care to avoid double counting sites (or broad locations, where these have been identified) which are already included in the Assessment, and coming to an informed view as to:

- @ Whether the annual rate is likely to increase or decrease:
- @ Whether the pattern of redevelopment is likely to remain the same, grow or decline; and
- @ Whether current market conditions are likely to stay the same, worsen or improved in the future.

Coming to an informed view on a windfall allowance means reflecting how comprehensive and intensive the survey has been in identifying sites and broad locations for future growth, and the extent to which the Assessment has been informed by the industry and by market intelligence."

6.3 There are clearly several alternative methodologies which could inform such an assessment of windfall capacity. Set out below is an example of one such methodology which could be used to inform the assessment. This is work which should properly be carried out by or on behalf of the Local Planning Authority. The assessment should also be based on up to date information contained in the SCHLAA and the SMHA.

6.4 In order to move matters forward, the methodology is set out below as an illustration of the kind of work which could be done to validate the trajectory.

6.5 The methodology set out below takes five broad categories of land windfalls arising in each category.

6.6 To be robust the assessment would need to incorporate market intelligence of the relative demand for each of the categories. The illustration is not intended to be prescriptive or definitive. It is merely included by way of an example of more detailed work which could be undertaken. We believe the production of a rigorous analysis of relative market demand for each of the land use categories informed by market intelligence would take some 4-6 weeks to complete. The work set out below is the best illustration to demonstrate the kind of work which could be used which could be achieved in the 1.5 working days between the receipt of the request for more work and the deadline for its delivery.

6.7 There are several potential sources of windfall in Maidstone Borough. Key sources include:-

2. School use to Residential
3. Industrial use to Residential
4. Other uses including Retail to Residential
5. Other uses including opportunities for small scale redevelopment and conversions of shop units etc by local builders.

Office Use to Residential

6.8 A major change in the potential for changes of use from Office use arises from the Town and Country Planning (General Permitted Development) Amendment (England) Order 2013 which permits the change of use from Office (B1) to Residential Use (C3) without planning permission until 30th May 2016.

6.9 An example of such a site is Concorde House, London Road, Maidstone which has potential to yield up to 74 windfall units, either as a result of the above amendment to permitted development, or as a result of the resolution to grant planning permission for such a change recently made at Planning Committee. There are several other similar office blocks in the Borough which may also yield windfall units.

6.10	Potential additional windfall
	supply from this source could be:- 2013/14 105 units
2014/15	105 units
2015/16	105 units
2016/17	105 units
2017/18	105 units
Total 2013/18	525 units

School Use to Residential

6.11 Examples of dwellings permitted on school sites in the recent past include:

MA/10/0846	Senacre Technology School,	14 units, and
MA/10/1413	Sutton Road.	59 units.
MA/11/1202	Kent Music School, Hastings Road	21 units
MA/10/0845	Former Horticultural Unit,	50 units
	Hadlow College,	
	Oakwood Park	

Whilst it is difficult to be certain which other similar schemes in the pipeline (such as New Line Learning) will actually be delivered, there are approximately 65 schools in Maidstone, which offers significant scope for consolidation.

6.12 Potential additional windfall supply from this source could be:-

2013/14	20 units
2014/15	20 units
2015/16	20 units
2016/17	20 units
2017/18	20 units
Total 2013/18	100 units

Industrial Type Use to Residential

6.13 A large part of the historic delivery of windfall sites has been through the redevelopment of former employment use to residential.

6.14 Recent examples include:

MA/09/1535	Leonard Gould, Pickering Street.	47 units
MA/10/2209	MBC Transport Depot, Armstrong Road.	65 units
MA/09/1563	Former Park and Ride, Coombe Quarry, Armstrong Road.	35 units

6.15 This source of supply will almost certainly be reducing at this time because of the high level of take up in recent years. There are numerous other industrial type uses in the Borough which may also yield windfall units.

6.16 Potential additional windfall supply from this source could be:

30 units

30 units

2015/16	30 units
2016/17	30 units
2017/18	30 units
Total 2013/18	150 units

Other Uses including Retail Use

6.17 The resolution to grant permission for the Next relocation to Junction 7 and the decision of the Secretary of State not to intervene opens the possibility of other retail relocations from sites close to the town centre. There are several prime river side retail sites which would benefit from a well-designed, or even signature, residential development.

6.18 Examples of permissions in this category which have come forward in the recent past are:

MA/08/902	Land rear of Maidstone Fire Station, Loose Road.	100 units
MA/06/0082	Maidstone Care at Home Service, Mote House, Maidstone.	34 units
MA/08/2384	Rear of BP Filling Station, Tonbridge Road.	14 units
MA/11/1061	Ambulance Station, Loose Road.	10 units
MA/09/1504	Fir Tree Yard, Stocket Lane.	6 units
MA/10/0649	Rose Inn, Farleigh Hill.	14 units
MA/10/0937	Victory Inn, Church Street, Tovil	7 units
MA/08/1994	Holly Bush Inn, Fisher Street	7 units

6.19 Pubs, petrol filling stations and various public sector uses are good examples of uses which are scattered through the built-up area of the town and villages. It is not possible to foretell which public house or petrol filling station will close but experience suggests that some will and whichever ones do close will yield potential unforeseen windfall units.

6.20 Potential additional windfall supply from this source could be:

2013/14	75 units
2014/15	75 units
2015/16	75 units
2016/17	75 units
2017/18	75 units
Total 2013/18	325 units

Opportunities for Small Scale Redevelopment (eg conversion of shop units) by local builders.

6.21 A typical local builder involved in this type of work would expect to complete (say) 3 dwellings each year. There are numerous examples of conversions such as conversion of redundant retail unit on Tonbridge Road to 3 dwellings. At a conservative estimate there are some 30-35 such local builders active in Maidstone, each adding to the windfall supply. Some of their units would be on garden land which should be excluded from consideration at this stage.

6.22 Potential additional windfall supply from this source could be:

2013/14	100 units
2014/15	100 units
2015/16	100 units
2016/17	100 units
2017/18	100 units
Total 2013/18	500 units

6.23 As can be seen these types of windfall opportunities could yield some 330 dwellings per annum. This work would benefit from an informed market analysis, which it has not been possible to commission in the time available to produce this report and may, we understand, take some 4-6 weeks to complete. The market analysis should

be able to throw light on which of these categories of redevelopment would increase and which would decrease overtime.

7. RECOMMENDATIONS

- 7.1 The consequence of the under counting is that as a result of a shortfall of only 370 dwellings (on the Council's own figures) it is proposing the emergency release of 1650 dwellings on greenfield sites. This would be in advance of full consideration of this issue in the process of the work in producing the new local plan for the Borough in the months up to July 2015. If followed, that process would allow all Council Members and all Parish Councillors to have their say in the pattern of release of sites.
- 7.2 What Boughton Monchelsea Parish Council is seeking as a result of this process is:-
 - 7.2.1 Members ask the officers to include a windfall allowance in the 5 year land supply at the earliest possible opportunity and give the Borough a five year land supply;

and
 - 7.2.2 in the interim, whilst this work is being prepared, no planning consents are issued on any greenfield site, including the Map Depot Site, Marden {110 dwellings) and Langley Park (Boughton Monchelesea and Langley Parishes) (600 dwellings).

APPENDIX ONE

ASHFORD BOROUGH COUNCIL

Contact: Carly Pettit, Policy Planner
01233 330216

Has a five year land supply.

Includes a windfall allowance.

Supply: 8466 dwellings.

Requirement: 5335 dwellings.

Years Supply :7.9

paulmccreery@waitrose.com

From: Carly Pettit <carly.pettit@ashford.gov.uk>

To: 'paulmccreery@waitrose.com' <paulmccreery1@waitrose.com>

Date: Wed, 11 Sep 2013 08:44:34 +0000

Subject: RE: Use of a Windfall Allowance in the Calculation of 5 Year Housing Land Supply (NPPF Paragraph 48)

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10 Appendix A ABC Housing land supply - table of commitments.pdf (application/pdf). 117 K

Hi Paul,

I have attached our latest public position on land supply that was submitted at the Examination into the Chilmington Green Area Action Plan. This shows that in March 2013 we had a housing supply of 8,466. The adopted Core Strategy allocation for the next 5 years was 5,335 units.

The Inspectorate at the Chilmington Examination and the Urban Sites DPD Examination last year accepted that we are meeting our 5 year housing land supply.

Urban Sites Report extract:

19. There is evidence of under delivery over a period at Ashford although this does not appear to result from an under supply of housing land allocations but as a consequence of the prevailing economic climate. The issue was addressed at the CS Examination where the Inspector reports [USI/CD/16] that the housing trajectory would require there to be a sharp increase in building overall, and that in the early part of the CS period a degree of caution over what can be achieved is called for (para 4.30). I have also noted the limitation imposed by the relatively small amount of brownfield sites within the USIDP area (para 4.4), and the need to carefully control the release of greenfield locations on the edge of the town (para 4.5). Taking all of these factors into account, and recognising that there is capacity both outside of the specific allocations and through windfalls - which the NPPF allows for in the five year supply (para 48) - it appears to me that it can be shown that there is an adequate five year supply of housing land to meet the NPPF requirement.

I hope this helps.

Carly

Carly Pettit | Policy Planner | Ashford Borough Council
Tel: 01233 330216

From: paulmccreery@waitrose.com [mailto:paulmccreery@waitrose.com]

Sent: 10 September 2013 16:28

To: paulmccreery@waitrose.com

Cc: Sue Fairhurst; Carly Pettit; sarah.parker@canterbury.gov.uk; tania.smith@dartford.gov.uk; june.house@dover.gov.uk; david.whittington@dover.gov.uk; sarah.godman@sevenoaks.gov.uk; tom.marchant@shepway.gov.uk; tonystewart@swale.gov.uk; alanbest@swale.gov.uk; rosemary.bullivant@thanet.gov.uk; steve.moore@thanet.gov.uk; nadia.ross@tmbsc.gov.uk; jill.peat@tmbsc.gov.uk; mark.cooper@tunbridgewells.gov.uk; matthew.kennard@tunbridgewells.gov.uk; shazad.ghani@gravesham.gov.uk; Ian Ellis; Ian Ellis; 'sarah.hodgworth@hblaw.co.uk'; 'Doug.Smith@tpbennett.com'

Subject: Re: Use of a Windfall Allowance in the Calculation of 5 Year Housing Land Supply (NPPF Paragraph 48)

Extant Planning permissions on non-allocated sites

		Units	Permitted	Planning Application number
Urban / edge of Ashford sites	Hunter Avenue	57	Yes	07/02294/AS
	Land west of Knoll Lane	64	No	08/01503/AS
	The North school, Essella Road	25	No	09/01473/AS
	Land south of Towers school, Faversham Road	8	Yes	10/01640/AS
	Land north of Gordon Close	6	Yes	06/00076/AS
	Park Farm East	202	Yes	various
	Repton Park	752	Yes	various
	Cheeseman's Green*	1100	No	various
	Aggregate total of less than 10 dwellings (46 planning permissions, granting 124 dwellings)	124		various
	Former Oil Depot, Bramble Lane, Wye	5	Yes	06/00518/AS
	Aggregate total of less than 10 dwellings (107 planning permissions, granting 178 dwellings)	178		various
Total Extant Permissions		2521		

*site constrained to occupancy of 700 units only pending major highway infrastructure improvements

Taken together, these two tables add up to 8640 'committed' units as at the end of March 2012 (the last full monitoring year). Since that date to the end of 2012, it is estimated that there have been 459 completions from the sites above, whilst planning permission has been granted for 285 units (including the conversion from office space to 234 units at Charter House in Ashford town centre).

This leaves a current overall housing land supply of 8466 dwellings, before taking account of any infrastructure constraints or other deliverability issues.

HOUSING LAND SUPPLY= SUPPORT TO MATTER3 STATEMENT

The following tables provides a breakdown of the housing land supply as expressed in existing adopted land allocations and /or extant planning permissions in support of the Council's response to Matter 3.7.

Development Plan Allocations

in	Q. 11 (b)	in	U E a. g H C p	fl. " el l.b) C: b b) Cm	g E c: g C: a. C E C:
in w S: Q C: I-	TC3	Town Centre - Elwick Place	300	No	
	TC4	Town Centre - Park Mall	100	No	
	TCS	Town Centre - Vicarage Lane Car Park	100	No	
	TC6	Town Centre - Elwick Rd/Station Rd	200	No	
	TC8	Town Centre - Godinton Way	300	No	
	TC9	Town Centre - Commercial Quarter	150	No	
	TC11	Town Centre - Victoria Way East	450	No	
	TC13	Town Centre - Victoria Way South	620	Yes	05/01716/AS
	TC14	Town Centre - Gasworks Lane	300	No	
	TC16	Town Centre - Former B & Q Site	100	No	
	TC19	Town Centre - New Street South	50	No	
	TC20	Town Centre - New Street North (Farm Foods)	50	No	
in J: in J: U: in	U1	Land off Abbey Way, Willesborough Lees	20	No	
	U2	Newtown Works*	928	Yes	05/01798/AS & 09/01281/AS
	U4	Lower Queens Road	40	No	
	U5	Land at Blackwall Road, Willesborough Lees	40	No	
	U6A	Former Ashford South Primary School	110	No	
	U6B	K College, Jemmett Road (sul.1Jcc to S106)	154	Yes	11/0405/AS

APPENDIX TWO

TUNBRIDGE WELLS BOROUGH COUNCIL

Contact: Adrian Tofts, Planning Policy Team leader
01892 554276

Has a five year land supply.

Includes a windfall allowance.

Supply (31st July 2013): 1628 dwellings

Requirement: 1629

Years Supply: 5.00


pauRmccreery@waitrose.com

From: Adrian Tofts <Adrian.Tofts@TunbridgeWells.gov.uk>

To: 'paulmccreery@waitrose.com' <paulmccreery@waitrose.com>

Date: Mon, 9 Sep 2013 13:43:12 +0000

Subject: FW: Use of a Windfall Allowance in the Calculation of 5 Year Housing Land Supply (NPPf Paragraph 48)

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Dear Mr Mccreery

As discussed, in answer to your queries:

- a) We include a small windfall allowance within our 5 year housing supply calculations. This is for years 4 and 5 only, to avoid any possible double-counting with existing permissions already in the system.
- b) There are no plans to revise this methodology at the moment.
- c) See (b)

The Council publishes monthly updates of its 5 year housing supply and these can be viewed here:

<http://www.tunbridgewells.gov.uk/residents/planning/planning-policy/monitoring-information>

The work underlying the windfall figure is set out here:

http://www.tunbridgewells.gov.uk/data/assets/pdf_file/0013/30208/Supporting-Documents-Housing-Land-Supply-Making-a-Windfall-Allowance.pdf

I hope that this helps. Do let me know if you need any more information.

Kind regards

Adrian Tofts

Tunbridge Wells Borough Council
 Five Year Housing Land Supply September 2012 to July 2013

Tunbridge \
 Wells Borough

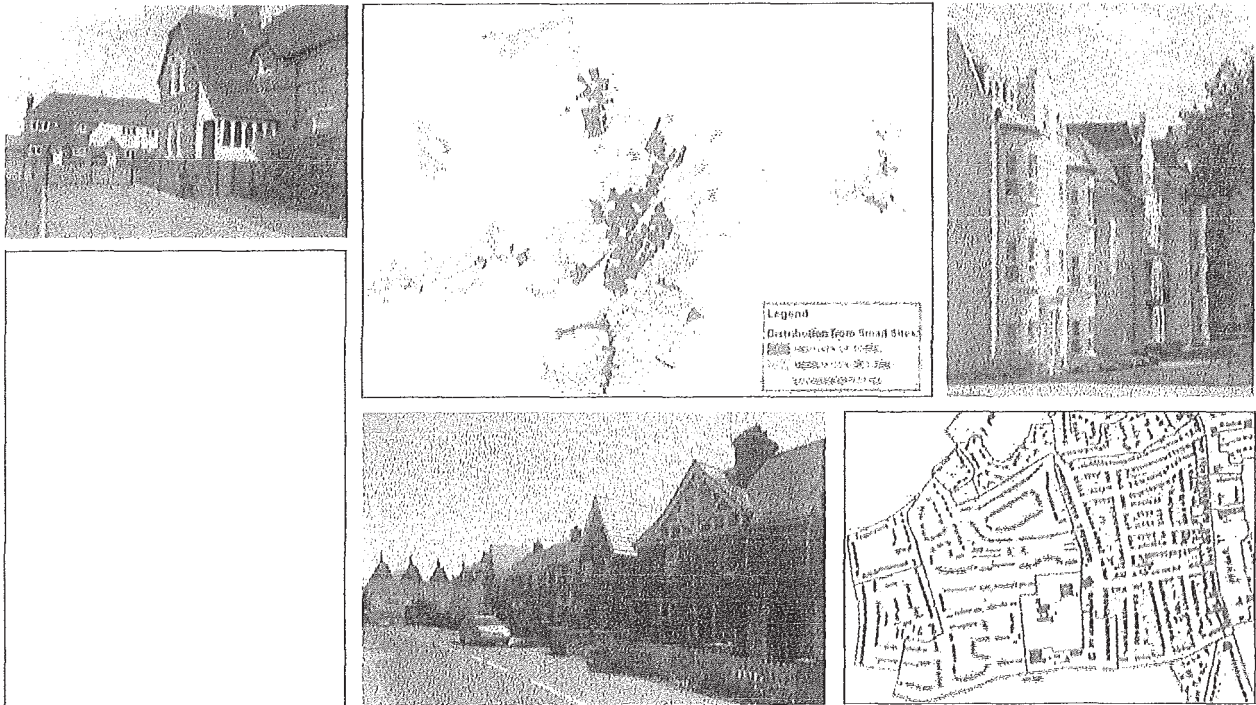
	30-Sep-12	31-Oct-12	30-Nov-12	31-Dec-12	31-Jan-13	28-Feb-13	31-Mar-13	30-Apr-13	31-May-13	30-Jun-13	31-Jul-13
From April 2006 to March 2026	6000	6000	6000	6000	6000	6000	6000	6000	6000	6000	6000
Existing Dwellings	2013	2013	2013	2013	2013	2013	2071	2071	2071	2071	2071
Net requirement	3987	3987	3987	3987	3987	3987	3929	3929	3929	3929	3929
	6.50	6.58	6.67	6.75	6.83	6.92	7.00	7.08	7.17	7.25	7.33
Remaining	13.50	13.42	13.33	13.25	13.17	13.08	13.00	12.92	12.83	12.75	12.67
Requirement	1477	1486	1496	1505	1515	1524	1512	1521	1531	1541	1551
Requirement Plus 5%	1551	1561	1571	1581	1591	1601	1588	1598	1608	1619	1629
	616	627	627	891	901	900	859	947	978	988	992
Reservations	90	88	88	87	86	85	85	84	83	82	82
Reservations	11	11	11	11	11	11	11	11	11	11	27
Identified Sites	10	10	10	16	16	19	19	19	19	19	19
On POL Sites in LBD	700	700	700	502	502	502	502	465	465	465	465
On POL Sites outside LBD	38	38	38	38	38	38	38	38	16	16	16
Identified Sites in LBD	12	12	12	27	27	27	72	27	27	27	27
Five Year Supply	1477	1486	1486	1572	1581	1582	1586	1591	1599	1608	1628
Difference between requirement and supply (negative = shortfall)	-74	-75	-85	-9	-10	-19	-2	-7	-9	-11	-1
Years to Supply	4.76	4.76	4.73	4.97	4.97	4.94	4.99	4.98	4.97	4.97	5.00

Additional Sites

	Net Additional Dwellings
From 2006 Allocations Not in Five Year Supply	176
Where Economic Development are actively working with current arrangements to enable availability	123
Additional Sites	299

On, windfalls have only been counted in the Main Urban Area (Royal Tunbridge Wells and Southborough). Additional windfall could be expected in other areas

Tunbridge Wells Borough Local Development Framework



Windfall

Housing land Supply : r/v1aking \fndfall / llowance

February 2013



Section 1: Introduction

1.1 The Government's National Planning Policy Framework (NPPF) includes policies aimed at "Delivering a wide choice of high quality homes" (NPPF, Part 6). One of those policies (at para. 47) requires local planning authorities to *"identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land."* Tunbridge Wells Borough Council (TWBC) will include a policy in the Local Plan to formally set out that the five-year housing supply will be identified from the following sources:

- iii sites with extant planning permission for housing
- @ sites without planning permission that have been specifically identified and are considered to offer a suitable location for development now; be available now; and have a reasonable prospect of delivering housing within five years (NPPF, footnote 11)
- o an allowance for windfall sites.

1.2 This Report is concerned with the last of these sources: making an allowance for windfall sites. The NPPF defines windfall sites as *"sites which have not been specifically identified as available in the Local Plan process. They normally comprise previously-developed sites that have unexpectedly become available."* Para. 48 provides for local authorities to make an allowance for windfall sites in the five-year housing supply if they have *"compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply."* This was not permissible under previous national policy for at least 10 years, unless genuine local circumstances prevented specific sites from being identified.

Why make a windfall allowance?

206dpa.

1.3 During the period 01 April 2000 to 31 March 2012, 2,472 dwellings, amounting to 65.4% of all housing built in the Borough during that time, were built on previously developed windfall sites. This excludes a further 260 dwellings (6.9%) which were built on unidentified greenfield sites that were also considered to be suitable for residential development. Such sites *were* effectively windfall sites, but not of the type that the Council can take into account when seeking to forecast future windfall delivery rates. Even discounting the latter type, windfall sites have clearly delivered a very significant proportion of recent housing development in the Borough and, while it is accepted that the rate of windfall development will possibly decrease over time, it is unrealistic to assume that it will not happen at all in the future. So why is this important?

1.4 TWBC believes that it has compelling evidence to justify the inclusion of a windfall allowance of up to 48 dwellings per year in the next five-year supply (reducing to 38 and 33 dwellings in subsequent five-year periods) and, furthermore, it considers that a more appropriate pattern of development will be achieved in this particular Borough by doing so. As such, the purpose of this report is to set out the evidence and method of analysis from which this allowance has been derived.

1.5 If the Council makes no allowance for housing to be delivered on windfall sites in the future, more greenfield sites will need to be identified and allocated in the Local Plan in order to demonstrate that the total remaining housing requirement can be met. To further demonstrate that there is a sufficient five-year supply of sites on an annual basis, it is also possible that some of the allocated greenfield sites will need to be phased for release earlier in the Plan period than would be necessary if the five-year supply included a windfall allowance. This is important because any unnecessary development on greenfield sites would be contrary to the Council's core planning strategy to *"pursue an urban focus for development in order to optimise the vitality of the Borough's town centres; to make optimum use of previously developed land; and to protect the distinctive character of the rural environment"* (Core Strategy, page 16, Box 3).

1.6 The Council has adopted this strategy, along with planning policies to support it, in recognition of the very significant environmental and strategic constraints upon development that exist in Tunbridge Wells. 70% of the Borough is covered by the High Weald Area of Outstanding Natural Beauty (AONB) and thus warrants the same level of protection as a National Park; and 22% is within the Metropolitan Green Belt (MGB) where a presumption against inappropriate development applies. For a variety of other reasons, it is neither possible nor appropriate to accommodate all the Borough's housing requirement outside of these sensitive areas and, while the Council recognises that there is a need to provide additional housing, it wishes for it to be delivered in a way that minimises the impact upon them. Making a reasonable allowance for the continued occurrence of development on windfall sites is one way that the Council can seek to balance these important objectives, and one that is consistent with new national policy in the NPPF'.

Structure of report

1.7 This report sets out the case, referring to accompanying documents and appendices.

1.8 Section 2 is a summary of the methodology and the various stages which have been applied in the analysis.

1.9 Past windfall completions and outcomes are worked through in Section 3. This includes the steps of excluding the rural and village component, then greenfield and then gardens, in order to arrive at a reliable and robust figure. It also examines sources of windfall in order to understand and profile future windfalls,

1.10 Extant consents are included as a contribution to the five-year supply. This, for the sake of clarity, is profiled according to expiry date over the three years. Note that this is also further discounted by 10% to reflect the normal lapse rate in the Borough. To avoid double counting, the consented are identified separately from the projected windfall, which is then only counted after this three-year period, although there is the probability that some windfalls will be consented and delivered within the three-year period.

1.11 The projected windfall for years 4 and 5 and then beyond are assessed by applying a series of 'moderators'. While using past trends, as well as actual consented rates, to provide clear evidence of windfall performance, this stage of the assessment applies a realistic projection to arrive at a reliable figure.

Section 2: Methodology

2.1 In order to make a windfall allowance, para. 48 of the NPPF requires compelling evidence that windfall sites have consistently become available in the area and that they will continue to provide a reliable source of supply. It further states that any windfall allowance should be *"realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens."*¹¹ This chapter sets out the main stages by which the Council will use its extensive evidence base, collected over the last 12 years, as the basis for forecasting a reasonable and robust windfall allowance that could be included in the five-year land supply.

Data and Methodology

2.2 The primary evidence that will support TWBC's windfall allowance is provided by data on past housing completions. The Council has collected detailed data over the period 01 April 2000 to 31 March 2012, which can be analysed to identify common trends in housing delivery across the Borough, in terms of where new housing has been built and on what types of sites, for example. These historic trends can then be used as the basis for forecasting likely future patterns of development, although these will need to be adjusted, or moderated, to take account of current conditions and of national and local policy and development objectives.

2.3 The recommended windfall allowance for Tunbridge Wells Borough will be derived in three main stages, as summarised in Table 1.

Table 1 Methodology for making the windfall allowance

Stage	Main points of analysis
1. Looking Back: Analysis of historic completions data to identify trends in windfall development	1.1 Identify total housing completions by Typical Urban Character Area.
	1.2 Identify the 'true' windfall component of completions by isolating those on unidentified sites from those on allocated sites.
	1.3 Identify the significant element of windfall only for the main urban areas of the Borough by excluding the rural and small settlements component.
	1.4 Identify the source of the remaining windfall component in terms of whether it resulted from the conversion or sub-division of existing buildings, from infill development or intensification, or from redevelopment.
	1.5 Identify the element of the windfall component that can be used for the purpose of making a future allowance under the terms of the NPPF, by isolating completions on previously developed sites from those on greenfield sites, including residential gardens.
	1.6 Identify the contribution that current extant consents can be expected to make to the housing land supply in the next three years.
2. Moderating Past Trends: Identifying the factors that may change windfall development rates in the future	2.1 Consider the impact on future windfall rates of identifying more sites through the Strategic Housing Land Availability Assessment (SHLAA) or other similar work.
	2.2 Consider whether any current national or local policy objectives could have an impact on future windfall delivery rates.

Stage	Main points of analysis
	2.3 Consider whether any other factors, including qualitative factors, could have an impact on future windfall delivery rates, such as whether sources of supply are more limited (see 1.4 above), or whether there is a need to preserve, enhance or rejuvenate the character of a particular area.
3. Looking Forward: Applying the moderating factors to past trends to forecast likely windfall delivery rates in the future	3.1 Apply the various moderating factors considered in Stage 2 to the windfall supply projected in 1.6, to forecast a reasonable and robust windfall allowance which could be included in the five-year land supply in the future.

2.4 Further detail will be provided about each stage of the methodology as they are worked through in Section 3.

APPENDIX THREE

APPEAL DECISION REFERENCE

APP/Q3630/A/13/2192120

DATED 17 JULY 2013

Appeal Decision

Inquiry held on 11 June 2013

Site visit made on 11 June 2013

by J C Chase MCD Dip Arch RIISA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 July 2013

Appeal Ref APP/Q3630/A/13/2192120

land at Wick Road, Englefield Green, Surrey

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - e The appeal is made by Fairview New Homes against the decision of Runnymede Borough Council.
 - .. The application Ref RU.12/0782, dated 24 July 2012, was refused by notice dated 25 October 2012.
 - .. The development proposed is the erection of 89 residential units in a mix of two and three storey buildings (33 No 4+ bed houses, 5 No 3 bed houses, 50 No 2 bed flats, 1 No 1 bed flat, including 18 affordable units) with associated access, parking and landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matters

The appellants submitted revised plans to rectify an error in unit numbering on the application set. The plans do not significantly alter the nature of the proposal and the Council raise no objection to their substitution. This decision is based on the amended drawings.

/' The main parties have formed an agreement under Section 106 of the Town and Country Planning Act 1990 to cover a range of obligations including the supply of affordable housing, the provision of alternative natural green space, contributions towards infrastructure, and highway works in the vicinity of the site. There is no reason to consider that the obligations would not satisfy the tests in para. 204 of the National Planning Policy Framework (NPPF 204) and their implications have been taken into account in assessing the appeal.

The description on the planning application refers to 92 dwellings, but the parties agreed at the Inquiry that the description shown above reflects amendments made prior to the planning decision. The Section 106 agreement confirms that 22 affordable units are intended.

Mah11 Issue

The main issue is whether the release of the site is necessary to meet the housing needs of the Borough and, if not, whether the benefits of the scheme would outweigh any harm arising out of the development.

Reasons

6. The site is an undeveloped plot of approximately 2.8ha situated on the southern side of Englefield Green alongside the A30 road, and abutting Green Belt on the southern and western boundaries. It has been identified as a potential housing site through several versions of the local plan, including in the adopted Runnymede Borough Local Plan 2001 (LP), where it is designated in Policy H06 as a Category 2 safeguarded site, to be released if needed to meet housing requirements arising between 2001 and 2006, and, if not used, thereafter retained as safeguarded to fulfil any future housing need (Policy H07). This principle is carried through to the emerging Runnymede Local Plan 2013, where Policy LP01 recognises the need to designate reserve sites in case a five year housing supply cannot be delivered from existing urban land, the appeal property being one of six such sites identified in Policy LP02.
7. There are two strands to the appellants' claim that the site should be released now. First, they consider that the five year housing supply requirement as set out in NPPF 47 is not currently satisfied and, second, even if there is a five year supply, the existing development plan policies are out of date and there are significant and demonstrable reasons why the presumption in favour of sustainable development should prevail (NPPF 14).

The Council's housing target is presently set at 161 new dwellings per annum (dpa), based on the allocations of the South East Plan, 2009. The appellants note that this plan has now been withdrawn in all respects material to this main issue, and, in any event, the figure was based on out of date projections. Nonetheless, for the purposes of the appeal, it is accepted that the dwelling requirement is 161 dpa. It is also acknowledged that this requirement has been achieved over each of the preceding five years, and, for the purposes of satisfying the objectives of NPPF 47, a 5% buffer is appropriate, leading to a need to show 5.25 years supply of deliverable sites.

9. In this respect, the Council's 2012 Strategic Housing Land Availability Assessment identifies a 5.75 year supply, made up of sites with planning permission, sites with a realistic prospect of delivery, and windfalls. This is increased to 5.88 years in updated estimates for 2013. The question is raised as to whether two sites (Aviator Park, 200 units, and the former Civic Offices site, 140 units) are deliverable in terms of the definition in the NPPF, and whether the allocation of windfall sites (41.2 dpa) is realistic.
10. There is evidence that the Civic Offices site was referred to as deliverable at appeals in 2008 and 2009, without proof of further progress. Nonetheless, it has previously had planning permission, and the Council's assertion that a developer withdrew from the scheme following the recession of 2008 is credible. There are indications that firm interest has now been reinstated and a planning application is imminent. It emerged during the Inquiry that there are third party interests over part of the land, but they appear to relate to a limited area of the site and there is no indication that they would *prevent* development of the remainder. With respect to Aviator Park, the Council produced a letter on behalf of the owners indicating an intention to proceed with a scheme, and setting out a timetable which would meet the requirement of a five year supply. On the ground, the sites appear to be suitable for development and there is no clear reason to dispute the Council's claim that they are available now, are in locations suitable for residential development, and have a realistic prospect of delivering housing within five years.

11. The NPPF allows inclusion of windfall sites where there is compelling evidence that they have consistently become available, and will continue to do so. In this instance, the allocation of 41.2 units per annum RS based on the average windfall delivery over the previous five years, excluding garden sites. There is no allowance for under-delivery, attention being drawn to a Council committee report in 2007, and an officer consultation in 2012, suggesting that 50% of the average figure would provide a more robust assessment. An appeal decision of 2012 in Somerset (APP/R3325/A/12/2170082) dealing with a similar issue, noted that the supply of windfall sites would, by definition, diminish, and that a reduced allowance would be realistic. On the other hand, the Council's historic figures do not show a marked downward trend and, whilst there is variability year by year, if the highest and lowest are excluded the average remains substantially the same. Some margin would be justified in order to achieve realistic figures, but a 50% decrease would produce a level that has been well exceeded in all but one of the preceding five years. The appeal referred to above suggested a moderate reduction. In this case, a similar discount to the 200% applied by the Council to deliverable sites without planning permission, for instance, would achieve a conservative approach without creating an unrealistically low estimate.
12. The Council indicate that the housing target has been exceeded by a significant amount since 2001 and, whilst the delivery after 2010 has slowed, it has remained above the target level in each year, despite recessionary pressures. It is accepted that past figures provide no guarantee of future performance, but the data suggests that there is a strong housing market in the area, which is likely to create continued pressure to bring forward and develop available land. Whilst there is a case to make reductions in the Civic Offices allocation to reflect third party interests, and to provide a buffer in the windfall allocation, there is no reason to assume that this would eliminate the existing margin in the figures, and there are adequate grounds to conclude that a 5.25 year supply of deliverable housing land has been demonstrated. In this respect, release of the site is not necessary to meet the housing needs of the Borough.
13. However, it is the appellants' contention that the Council's housing supply policies are out of date and, in these circumstances, permission should be granted unless the harm arising would significantly and demonstrably outweigh the benefits. In particular, they note that the target of 161 dpa is derived from the South East Plan, which has now been withdrawn, and that the figure is based on historic data, where more recent surveys indicate a larger requirement. There have been a range of objections to the continued use of this target in the emerging Local Plan, from adjoining planning authorities as well as residential developers, on the basis that it does not represent an objectively assessed need for market and affordable housing. In due course, these assertions will be tested during the Local Plan Examination, which will assess the full range of factors which are taken into account in establishing a target. In the mean time, whilst the evidence in support of a higher figure is noted, the target of 161 dpa is the only independently assessed figure available, and there is no compelling reason to adopt a different level.
14. LP Policy H06, in referring to structure plan objectives over the period 2001-2006, no longer represents the up to date position, but Policy H07 makes provision for the treatment of safeguarded sites after 2006, and the appellants do not mount a serious challenge to the principle behind Policies H06 and H07. Safeguarded sites, including the appeal property, should be reserved until

required to meet housing needs. This is a long standing intention, dating at least from 1986 when the site was released from the Green Belt and allocated as safeguarded land, and the principle continues into the emerging Local Plan. Nor is it out of keeping with the objectives of the NPPF, which recognises the necessity to reserve land when defining Green Belt boundaries, to provide for long-term development needs. There is no clear case to show that the relevant parts of the adopted Local Plan policies are out of date in these respects.

15. However, even if a different view was taken of the foregoing, there are grounds to consider that the harm arising from the release of the land would significantly and demonstrably outweigh the potential benefits.
16. Attention has been drawn to a range of such benefits. In addition to the overall *objective* in the NPPF to boost the supply of housing, there would be employment and commercial activity generated during the construction works, the potential for an increased demand for local goods and services, and contributions to public funds through Council Tax and the New Homes Bonus, as well as the provision of 22 affordable homes, towards meeting an acknowledged and substantial need in the Borough. However, whilst these economic and social outcomes are recognised, there is no indication that this scheme would be especially beneficial in these respects, such as to particularly favour the use of this site over any other. Any benefit arising out of the offered planning obligations would be incidental to the primary need to meet the infrastructure requirements of the development itself.
17. Turning to the potential harm, there is a lack of clear evidence that any oversupply of housing would be unduly detrimental. The Council acknowledge that Runnymede has a strong housing market, and there is no reason to consider that development of this site would adversely affect demand for housing elsewhere. Nor is there evidence that the estate would place a burden on local infrastructure and facilities which could not be addressed by the agreed planning obligations. However, it is indicated that about 79% of the Borough falls within the Green Belt, and its protection is an objective of both the Local Plan and the NPPF. Safeguarding land forms an integral part of that policy of protection, by providing the space to meet long term development needs without impinging on the Green Belt.
18. If the site is developed now, and is therefore unavailable when the need arises in the future, then there is the expectation that either the development of the Borough would be unduly constrained, or pressure would be placed on the release of Green Belt land. In either case, the result would be detrimental to the long term planning interests of the area, and to the general thrust of the NPPF with respect to the need to plan for sustainable growth, and to protect the permanence of the Green Belt. This harm is of sufficient importance to significantly and demonstrably outweigh the identified benefits of the scheme, and would prevent the proposal from achieving the sustainable form of development for which the NPPF creates a presumption in favour.
19. In terms of the main issue, the release of the site is not necessary to meet the housing needs of the Borough and, the benefits of the scheme would not outweigh any harm arising. In reaching this conclusion, regard is had to the need to achieve the economic and social advantages of increasing the supply of housing which forms an important component of both the NPPF and of recent ministerial statements. However, there is no reason to consider that this aim should be achieved without due regard for the other objectives of the NPPF,

TABLE PMC 1.

Maidstone Borough Council, calculation of 5 year housing land supply based on differing assumptions about the level of windfalls.

	Requirement	MBC	5 yr Supply	BMPC
1.	S.E. Plan based Housing Requirement 2006 to 2026	11,080	11,080	11,080
2.	Less completed dwellings 2006/07 to 2012/13	-4,880	-4,880	-4,880
3.	Residual Requirement 2013/14 to 2025/26	6,200	6,200	6,200
4.	Annual Target 6,200 + 13 years to end of plan Period	477	477	477
5.	Add 5% buffer per NPPF REQUIREMENT (477 x 5%)	24	24	24
6.	Annual Target (Including 5% buffer)	501	501	501
7.	Five year Target (Including 5% buffer)	2,505	2,505	2,505
	Supply			
8a.	Site Supply (Includes 931 dwellings from Strategic Sites)	2,135	2,135	2,135
8b.	Windfall Supply	0	370	1660
8c.	Total Supply	2,135	2,505	3,795
9.	Shortfall/Surplus in housing land supply	-370	0	+1290
10.	Percentage housing land supply: Total Supply (8c.) divided by Five Year Target (7.)	85.23%	100%	151.5%
11.	Number of years housing land supply: Total Supply (8c.) divided by Annual Target (6.)	4.26	5.00	7.57

TABLE PMC 2.

Maidstone Borough Council, analysis of completions and windfalls.

Year	All Completions	Windfall Completions	Percentage
1/4/2006 to 31/3/2007	714	370	52%
1/4/2007 to 31/3/2008	992	294	30%
1/4/2008 to 31/3/2009	441	251	57%
1/4/2009 to 31/3/2010	581	400	69%
1/4/2010 to 31/3/2011	649	344	51%
Total 1/4/2006 to 31/3/2011	3377	1659	49%
Annual Average 2006/11	675	332	49%

NOTES

- A. 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.
- B. Table PMC2 is based on data supplied by I&CC. Years 2006 to 2011 are the last 5 years for which windfall completion data is available.
- C. Over the years 2006 to 2011 windfall completions averaged 332 dwellings per annum and were just about half (49%) of all completions.
- D. Based on the last five years figures KCC projected future annual windfall average is 332 dwellings per annum (or 1660 dwellings over 5 years). Based on the above figures, PMC Planning agrees with the KCC projection.
- E. Table PMC1 shows that based on MBC figures there is a shortfall in the 5 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 5 year supply of housing land and no shortfall.
- F. 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).
- G. 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).
- H. 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 could Maidstone have continued to achieve such high levels of completions?

20 year housing trajectory

as of 1 April 2013



Diagram illustrates 4 points:

- 1) 20 year housing trajectory
- 2) 5 year housing land supply within trajectory provides certainty for that **rolling** period
- 3) An allowance for windfalls is included in the last five years
- 4) Housing target 2011-2031

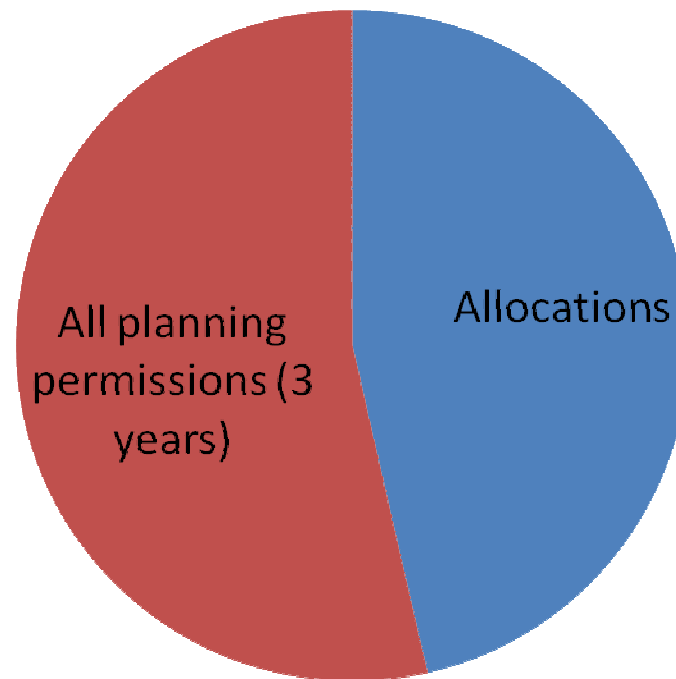
TARGET
2011-
2031

Five year housing land supply calculations

	Requirement	dwellings
1	Total 20 year housing requirement	11,080
2	Dwellings already built	-4,880
3	Requirement 2013 to 2026	6,200
4	Annual target ($6,200 \div 13$ years to end of plan period)	477
5	Add 5% buffer per NPPF requirement ($477 \times 5\%$)	24
6	Annual target including 5% buffer	501
7	5 year dwelling target 2013 to 2018 (501×5 years)	2,505
	Supply	
8	5-year housing land supply 2013 to 18	2,135
	5-year housing land supply position at 1 April 2013	
9	Shortfall in housing land supply	-370
10	Percentage housing land supply ($2,135$ as a % of $2,505$)	85.2%
11	Number of years housing land supply ($2,135 \div 501$)	4.2 years

2013 total housing land supply

Proportion of guaranteed allocations and permissions

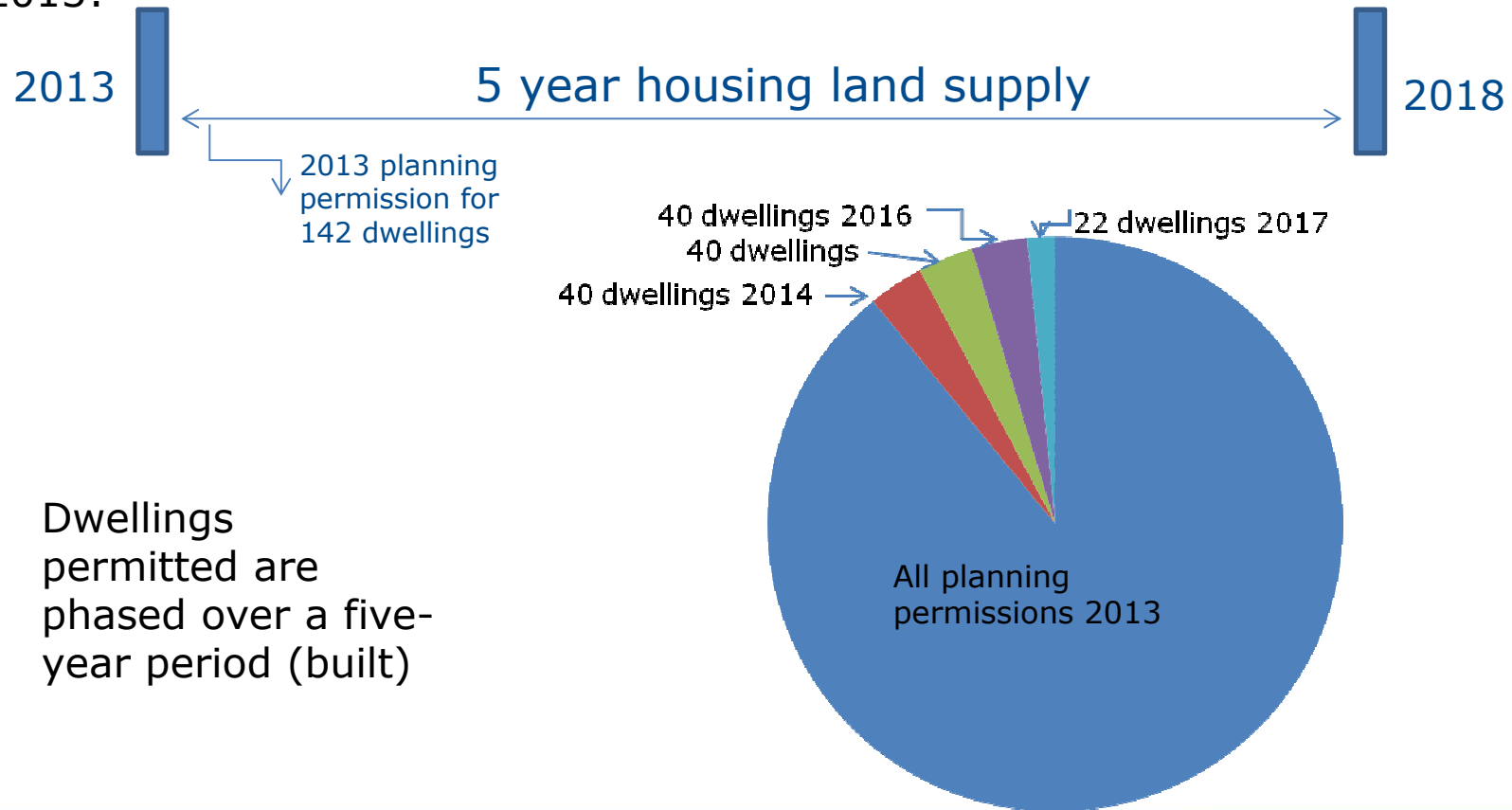


Requirement = 2,505
Supply = 2,135
Deficit = 370

As of 1 April 2013

We already include windfalls

Here's a current example using the Maidstone TV studios, as of 1 April 2013:



Dwellings permitted are phased over a five-year period (built)

But what about 'pure' windfalls?

→ Why not include a windfall allowance now?

- 5 year supply uses permissions (down to 1 dwelling) and allocations (down to 5 dwellings) - this is the most compelling figure and provides certainty within the 20 year trajectory
- Windfall and non-implementation rates are risky and cannot be objectively assessed
- Windfall permissions won't be lost because we include them in the rolling 5 year supply
- The bigger the windfall allowance in the last 5 years of the trajectory (2026-2031) = less need to allocate land
- We include review points within the Local Plan and through annual monitoring

g

SCENARIO 1 – current methodology

	Requirement	Number of dwellings
1	Total 20 year housing requirement	11,080
2	Dwellings already built	-4,880
3	Requirement April 2013 to April 2026	6,200
4	Annual target (6,200÷13 years to end of plan period)	477
5	Add 5% buffer per NPPF requirement (477x5%)	24
6	Annual target including 5% buffer	501
7	5 year dwelling target 2013 to 2018 (501x5 years)	2,505
	Supply	
8	5-year housing land supply 2013 to 2018	2,135
	5-year housing land supply position at 1 April 2013	
9	Shortfall in housing land supply	-370
10	Percentage housing land supply (2,135 as a % of 2,505)	85.2%
11	Number of years housing land supply (2,135÷501)	4.2 years

- 61
- 1.1

The methodology for this calculation involves measuring the council’s supply of housing land against the requirement.
- 1.2

The requirement is 2,505 for 2013-2018. Points 1-7 above demonstrate the methodology.
- 1.3

The supply is 2,135 for 2013-2018, calculated from three sources:
 - Planning permissions that are yet to be implemented (1,144);
 - Strategic site allocations approved for development management purposes on 13 March 2013 (931); and
 - Saved greenfield allocations from the Maidstone Borough Wide Local Plan 2000 (60).
- 1.4

The shortfall between the requirement and supply figures is 370 units, which equates to 85.2% or 4.2 years housing land supply.
- 1.5

This scenario excludes a windfall allowance and non-implementation rate for the following reasons:
 - All planning permissions are monitored annually (1+ dwellings);
 - All allocations are monitored annually (5+ dwellings);
 - As such, there is a high degree of accuracy and certainty;
 - Windfall sites are included in the 5 year supply as they are picked up as planning permissions; and
 - The inclusion of a windfall allowance and non-implementation rate present risk and can potentially impact the deliverability of the 5-year supply.

SCENARIO 2 – inclusion of a pure windfall allowance and non-implementation rate

	Requirement	Number of dwellings
1	Total 20 year housing requirement	11,080
2	Dwellings already built	-4,880
3	Requirement April 2013 to April 2026	6,200
4	Annual target (6,200÷13 years to end of plan period)	477
5	Add 5% buffer per NPPF requirement (477x5%)	24
6	Annual target including 5% buffer	501
7	5 year dwelling target 2013 to 2018 (501x5 years)	2,505
	Supply	
8a	Planning permissions and allocations	2,135
8b	Pure windfall allowance	301
8c	Non-implementation rate	-361
8d	5-year housing land supply 2013 to 2018	2,075
	5-year housing land supply position at 1 April 2013	
9	Shortfall in housing land supply	-430
10	Percentage housing land supply (2,075 as a % of 2,505)	82.8%
11	Number of years housing land supply (2,075÷501)	4.1 years

- 2.1

The methodology for this calculation remains the same as scenario 1, except for the inclusion of a pure windfall allowance and non-implementation rate. These have been calculated based on historic trends (see Figure 1) and therefore is not an accurate prediction of the future.
- 2.2

For the pure windfall allowance, completion data for the last 5 years is filtered to remove greenfield sites, previously identified sites, Urban Capacity Study 2002 and 2006 sites, SHLAA 2009 sites and allocations from the MBWLP 2000.
- 2.3

For the non-implementation rate, a list of expired planning permissions for the last 5 years is generated, which demonstrates the units that have not been built.
- 2.4

The annual averages of both sets of data are then multiplied by 5 years for inclusion in the 5 year housing land supply calculations.

Year	Number of completed units on pure windfall sites that year	Number of expired units that year
2008/09	6	65
2009/10	3	57
2010/11	15	83
2011/12	126	134
2012/13	151	22
Total	301	361
Annual average	60.2	72.2

Figure 1