

OPINION

1. I am asked to advise Boughton Monchelsea Parish Council in relation to the proper treatment by Maidstone Borough Council of two principal topics, a planning application for 600 dwellings at Langley Park, and the assessment of a five year housing land supply. The relevant background is as follows.
2. The Langley Park site comprises some 34 hectares. The site – indeed a slightly larger site – was allocated for development in the adopted Maidstone Local Plan December 2000. The allocation was for an integrated “village” on the edge of the urban area. Some 6 hectares were proposed for employment development (20/21,000 square metres), and 13 hectares were proposed to accommodate some 325 houses. A small part of this allocated site was subsequently developed for employment purposes.
3. The South East Plan required 11,080 dwellings to be provided in the period 2006-2026. The Plan was revoked on 25 March 2013. Maidstone Borough Council published a draft Core Strategy (no longer being pursued) which required provision for 10,080 dwellings over the same period. The chronological consideration of housing supply matters, so far as relevant to this Opinion, has been as follows. In May 2009 the latest SHLAA was published. This predicted that windfall sites would provide some 628 dwellings over the period 2013-2018. The 2010/2011 AMR predicted a windfall supply beyond 2021 (in accordance with PPS3) at the rate of 145 dpa, i.e. 725 dwellings over a five year period. Based on a requirement figure of 10,080, and making no allowance for windfalls, the land supply was stated to be 6.4 years.

4. The 2011/2012 AMR made no allowance for windfalls. It assessed a 4.5 years supply (based on a requirement of 10,080) or 3.9 years supply (based on 11,080).
5. The Provisional Figures dated 27 February 2013 provided by Kent County Council predict, for the five year period commencing 2012/13, an annual windfall completion of 332 dwellings, i.e. 1,660 dwellings over the five year period.
6. A report was taken to Maidstone's Cabinet on 13 March 2013. Paragraphs 1.5.4-1.5.6 stated (so far as relevant) as follows:

"1.5.4 The November 2012 Cabinet report highlighted the fact that, although the Council continues to experience high levels of dwelling completion rates on sites with planning permission, the windfall sites on previously developed land (brownfield land) that formerly contributed to the borough's five-year housing land supply at a steady pace are no longer materializing at the same rate. The ability to abolish regional strategies is embedded in the Localism Act (2011) but the South East Plan (SEP) has not yet been revoked. Given that Maidstone's Core Strategy target is under review, 5 year calculations should now be based on the SEP target of 11,080 dwellings (as opposed to the draft Core Strategy target of 10,080).

1.5.5 The Council's Annual Monitoring Report 2011/12 reveals Maidstone has a 4.5 year land supply against a 10,080 dwelling target and 3.9 years against an 11,080 target. Until such times as a 5 year supply can be demonstrated, planning applications on greenfield sites cannot be refused on the grounds of prematurity and must be assessed on individual merit (including sustainability). The Council has already received a number of residential planning applications on greenfield sites and further applications, particularly for the strategic site allocations, are expected to be submitted after March.

1.5.6 It is important to note that four out of the six housing land allocations to the north west and south east of the urban area identified in the Core Strategy Strategic Site Allocations 2012 are residential allocations in the adopted MBWLP 2000: ...Langley Park (SS2a)... These four sites have already been through public examination so not only has the principle of residential development been established, but the sites are also development plan allocations (section 38(6) of the Planning and

Compulsory Purchase Act 2004 says that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise)... ”

The report went on to recommend that provision be made for 14,800 dwellings between 2011 and 2031. It further stated that: “...national guidance allows the inclusion of a windfall site allowance for the latter years of the plan period”.

7. The Interim Approval of Maidstone Borough Local Plan Policies proposes to allocate the Langley Park site for 600 dwellings. No employment development is proposed.
8. Government policy in relation to a windfall allowance has changed. Paragraph 59 of PPS3 provided:

“Allowances for windfalls should not be included in the first ten years of land supply unless local planning authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified...”

PPS3 was revoked by the NPPF in March 2012. Paragraph 48 provides:

“Local planning authorities may make an allowance for 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”.

9. Against that background, I am asked – in effect – to advise on three principal topics. The first relates to the compliance or otherwise of the submitted proposals for Langley Park with the statutory development plan. As noted, the proposals promote one principal use (600 dwellings) together with supporting or ancillary facilities. The Local Plan allocations are for a mixed use village, comprising residential (325 dwellings) but also

comprising a further and substantial primary use, policy ED1(iv) promoting some 20/21,000 square metres of employment development. It is quite clear that the current proposals would constitute a departure from the development plan, in promoting a single primary use and failing to comply with the employment policy. That being so, the advice in the report to Cabinet at paragraph 1.5.6 is a misdirection, and misleading to members. Any planning permission granted on the basis of this advice would be liable to be quashed in the courts.

10. The second question relates to the appropriate requirement figure to be used as the basis for an overall target figure and hence the basis for a five-year assessment of housing supply. There are, in effect, three main candidates for such a requirement figure. There is the South East Plan housing target of 11,080 dwellings over the plan period 2006-26 (554 dpa); the figure of 10,080 dwellings from the previous draft Core Strategy; and the figure of 14,800 dwellings approved in March 2013 as a working target “*until such time as the work confirming the borough’s housing land supply and the identification of environmental constraints is completed*”. One can test the matter this way: if this issue came before an Inspector at a planning inquiry, I have no doubt that he would conclude that the former Core Strategy had no weight; that the emerging Local Plan figure has very little weight at this stage and has not been tested; but that the former South East Plan figure has the merit that it was supported by a substantial evidence base and was subject to independent assessment. He would therefore be likely to use the SEP requirement figure as the basis of the calculation. I have known Inspectors take this approach in many appeal decisions, following revocation of the relevant regional strategy.
11. The third matter relates to the treatment of windfalls. As noted above, the report to Cabinet on 13th March 2013 states that: “National guidance allows the inclusion of a

windfall site allowance for the latter years of the plan period”. As set out in paragraph 8 above, this advice was in the now cancelled PPS3, and has been substituted by the quite different advice in NPPF. This is a further misdirection to members, and if it were to be the basis for advice to members on the determination of the planning application, to the effect that there is consequently a lack of a five-year supply, this again would be a legal misdirection. It is quite clear from the figures set out at paragraphs 3 and 5 above, that the twin tests of paragraph 48 of NPPF are met – windfall sites have consistently become available in the local area, and the clear evidence is that they will continue to provide a reliable (and indeed significant) source of supply. Indeed, depending on which prediction is used, and taking the requirement derived from the South East Plan, there would be between 5 and 7 years supply. (I understand that the supply figures in the AMR 2011/12 have since been revised upwards, and hence these supply figures need to be increased further).

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Landmark Chambers
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IN THE MATTER OF:

BOUGHTON MONCHELSEA PARISH COUNCIL

OPINION

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