

BOUGHTON MONCHELSEA PARISH COUNCIL

FURTHER OPINION

1. I asked briefly to respond to a Note (the “Note”) from the Chief Executive of Maidstone Borough Council which is effectively a response to my Opinion dated 30th July 2013. I confine my response to the issue relating to the role of windfall sites in the calculation of the 5 year housing supply.
2. In summary, the Note strongly confirms my previous advice to the effect that officers have seriously misunderstood policy in NPPF, and—subject to a Council meeting on 2nd September 2013—are leading Members to misdirect themselves in this important respect.
3. The Note makes the error crystal clear: *“Officers’ advice is to include a windfall provision for the latter years of the plan period...MBC have not made provision for windfalls that are wholly unknown about...As prospective windfalls are not identifiable they go against the grain of policy...”* (emphasis supplied).
4. This shows a continuing and substantial misunderstanding of national policy. Paragraph 47 of NPPF requires the inclusion within the supply of “specific deliverable” sites, which include (amongst others) allocations and “sites with planning permission”. These are, manifestly, sites that are known about. Equally obviously, there will be many sites in this category (especially those with planning permission) that were not previously known about, but have now become specific and deliverable.
5. Paragraph 48, by contrast, introduces an additional allowance, by definition sites not known about at the time of the overall calculation.
6. The Note wrongly claims that windfalls are included in the MBC supply on two bases. First, *“The MBC housing completions calculation includes housing constructed on sites not previously identified in the planning process ie sites that have not been allocated in the local plan”*. Of course it does, but this has nothing whatever to do

with the calculation of future supply which is the current issue. Second, it is claimed that “*..the methodology includes reviewing every site with planning consent, including housing sites not previously identified in the planning process*”. Again, of course it does, but these are sites that are now known about, ie they are paragraph 47 sites.

7. The misunderstanding is seen again in the claim that the NPPF approach would “*result in double counting of windfalls*”. Not so—as set out above, there will be sites that now have planning permission which were not previously known about (ie they were unplanned windfalls). But they are now in the known supply for the purposes of paragraph 47. They are now part of the known existing supply, but are distinct from the proper allowance for future windfalls.
8. I refer again to the claim that “*as prospective windfalls are not identifiable they go against the grain of policy....*”. This is simply a rejection, a misunderstanding of policy. Paragraph 48 allows an allowance for windfalls where two criteria are met, consistent supply in the past, and evidence of future reliable supply. The evidence is quite clear that both criteria are met.
9. For these reasons, there are continuing misdirections by officers.

Christopher Lockhart-Mummery QC

Landmark Chambers

30 August 2013

PMC Planning

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