

MAIDSTONE BOROUGH COUNCIL

**PLANNING, TRANSPORT AND DEVELOPMENT OVERVIEW &
SCRUTINY COMMITTEE**

TUESDAY 17 SEPTEMBER 2013

REPORT OF HEAD OF PLANNING AND DEVELOPMENT

Report prepared by Sue Whiteside

1. FIVE YEAR HOUSING LAND SUPPLY

1.1 Issue for Consideration

1.1.1 To consider the methodology of and the judgements made in the calculation of the council's five year housing land supply. A PowerPoint presentation will be given at the meeting, to further clarify the methodology used for calculating the various elements that contribute to land supply and the judgements which have been applied.

1.2 Reason for Urgency

1.2.1 This item is considered urgent as it will support the Committee in its deliberations. The item was not available earlier due to insufficient time between the request for the meeting and agenda publication.

1.3 Recommendation of Head of Planning and Development

1.3.1 That Planning, Transport & Development Overview and Scrutiny Committee recommends to Council that the methodology and judgements that have been made to calculate the council's five year housing land supply are sound.

1.4 Reasons for Recommendation

1.4.1 At a meeting held on 2 September 2013, full Council approved a motion that the Planning, Transport & Development Overview and Scrutiny Committee scrutinise the methodology and judgements made in calculating the council's five year housing land supply.

1.4.2 **Why the council must demonstrate a five year housing land supply**

1.4.3 At any given point in time the council has a duty to maintain a five year supply of housing land against its housing target. In the absence of a five year supply, the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) prevails.

"To boost significantly the supply of housing, local planning authorities should ... 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. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market" (NPPF paragraph 47).

"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans" (NPPF paragraph 47 footnote 11).

"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" (NPPF paragraph 48).

"Windfall sites: 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" (NPPF Glossary).

"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites" (NPPF paragraph 49).

- 1.4.4 Paragraph 14 of the NPPF makes clear that the presumption in favour of sustainable development for decision making means granting planning permission where a development plan is absent, silent or relevant policies are out-of-date, unless any significant and demonstrable adverse impacts from the development would outweigh the benefits, or specific policies in the NPPF would indicate development should be restricted. Policies are not considered to be up-to-date if the council cannot demonstrate a five year supply of housing land.

Methodology used for calculating five year housing land supply

- 1.4.5 Five year housing land supply is updated annually at 1 April each year. The calculation takes account of dwellings that have been built (also referred to as completions), planning permissions that have not been fully implemented, land allocations in local plans and, if evidence supports their inclusion, windfall sites.
- 1.4.6 Five year calculations are currently based on the former South East Plan housing target for Maidstone of 11,080 for the period 2006 to 2026, which has been tested through public examination. Legal advice has confirmed this is the correct interim target to use for five year supply calculations.
- 1.4.7 The five year land supply position is updated annually and included in the council's Annual Monitoring Reports (AMR). These reports are given consideration each year at meetings of a Member Advisory Group or Overview & Scrutiny before being approved by Cabinet Member.
- 1.4.8 For the purpose of explaining the methodology for the calculation, the table set out in the latest published AMR for 2011/2012 has been used. This document was considered by the Spatial Planning Strategy Advisory Group on 22 January 2013 and was approved by the Cabinet Member for Planning, Transport and Development on 8 February 2013.

	Housing Target 2006-2026	11,080
1	Residual target after deducting 4,250 dwellings that were completed between 2006/07 and 2011/12	6,830
2	Annual target over remainder of plan period (residual target divided by 14 years remaining to 2026)	488
3	Annual target including 5% buffer	512
4	5 year housing land supply target (annual target x 5 years)	2,439
5	5 year housing land supply target (annual target x 5 years) including 5% buffer	2,561
6	5 year housing land supply 2012/13 to 2016/17	1,983
7	5 year supply of housing land as a percentage of the target at 1 April 2012	77
8	Number of years housing land supply at 1 April 2012	3.9

Table 1: Five year Housing Land Supply 1 April 2012 (Annual Monitoring Report 2011/12)

1.4.9 To calculate the 5-year target, the cumulative total number of dwellings completed since the base date of the plan period is first deducted from the 20-year plan target (11,080 less 4,250 = 6,830) (line 1). As part of the monitoring process, an annual survey of all sites with planning permission is undertaken each April to establish how many dwellings have been completed in the previous year. In the example above there is a total of 6 years' worth of completions so there will be 14 years remaining to the end of the plan period. Thus, the balance of 6,830 dwellings needs to be built over the remaining 14 years of the plan period. This represents an annual average of 488 dwellings ($6,830 \div 14 = 488$) (line 2).

1.4.10 Maidstone has a good record of delivery against past housing targets so a 5% buffer is appropriate to meet NPPF requirements ($488 \times 105\% = 512$) (line 3). The annual target of 512 dwellings is multiplied by 5 years to establish the council's 5-year housing target of **2,561 dwellings**¹ (line 5).

1.4.11 To demonstrate how the council can meet this 5-year target, the council must examine the elements of its housing land supply (line 6). The supply comprises sites with planning permission at 1 April 2012 where dwellings have either not started or are under construction (all dwellings recorded are net of any dwelling losses), together with sites allocated in the Maidstone Borough-wide Local Plan 2000 that had not been granted planning permission at 1 April 2012. In 2012, the supply calculation also included a small number of previously developed sites (brownfield land) identified through the Strategic Housing Land

¹ The small difference of 1 dwelling is due to rounding of figures

Availability Assessment 2009 (SHLAA).

Sites with planning permission at 1 April 2012	1,433
Maidstone Borough-wide Local Plan 2000 allocations	468
SHLAA 2009 previously developed sites	82
Total	1,983

Table 2: Housing Land Supply 2012/13 to 2016/17

- 1.4.12 All planning permissions down to sites of one dwelling are surveyed annually. For each site of 5 units or more, the planning agents/ developers are contacted to confirm that their site is deliverable (NPPF paragraph 47 footnote 11) within five years from the base date of the calculation, i.e. between 1 April 2012 and 31 March 2017 in the case of the example being used to demonstrate the methodology. Where it is clear that schemes will not be built within five years, the dwellings are removed from five year supply. The breakdown of the list of sites that contribute to the total of 1,433 dwellings is attached at Appendix A.
- 1.4.13 Planning agents and developers were also contacted to discuss the phasing of allocated sites in the Maidstone Borough-wide Local Plan 2000. Sites included Land west of Eccleston Road; Hook Lane, Harrietsham and Oliver Road, Staplehurst; and a proportion of the dwellings from Langley Park and East of Hermitage Lane. All of these sites contributed 468 dwellings to five year supply. With the exception of Eccleston Road, the sites are greenfield allocations in the Maidstone Borough-wide Local Plan 2000. Hook Lane and Oliver Road were permitted as exceptions to a moratorium on the release of allocated greenfield sites, for reasons set out in Planning Committee reports. A proportion of the yields from Langley Park and Hermitage Lane were included in the latter years of five year supply in the expectation that these sites would be the first to come forward following the adoption of the local plan.
- 1.4.14 Three brownfield sites were identified through the 2009 SHLAA, yielding 82 dwellings: Brunswick Street; Smarden Road, Headcorn; and Syngenta Phase 1, Yalding.
- 1.4.15 Consequently at 1 April 2012 the council could only demonstrate the ability to meet **77% of its five year housing land target** (supply of 1,983 ÷ target of 2,561 x 100) (line 7). This represented **3.9 years of housing land** (supply of 1,983 ÷ annual requirement including 5% buffer of 512) (line 8). Regard was given to the option to include windfall sites in five year supply, but were excluded for the reasons set out in this report.
- 1.4.16 Since the five year housing land target and the sites that contribute towards supply are updated annually, some of the sites identified in the example used in this report will have been built since 1 April 2012

or received planning permission. As the calculation is rolled forward to reflect these changes, the target is updated to a new base date and new previously unidentified planning permissions are added to supply. Whilst the figures change at 1 April 2013 (85% of the 5-year housing target, representing 4.2 years of land supply), the methodology is fundamentally the same.

Judgements made in the calculation of the council's five year housing land supply

1.4.17 Local authorities may, at their discretion, include an allowance for windfall calculations in their five year housing land supply, but only if there is compelling evidence to support this approach.

1.4.18 There has been no fundamental change in national policy with regard to a local authority's discretion to include windfall sites in five year housing land supply following the introduction of the NPPF. Former Planning Policy Statement 3: Housing (PPS3) stated:

"Allowances for windfalls should not be included in the first 10 years of land supply unless Local Planning Authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified. In these circumstances, an allowance should be included but should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends" (PPS3 paragraph 59).

Windfall sites are those which have not been specifically identified as available in the local plan process. They comprise previously-developed sites that have unexpectedly become available. These could include, for example, large sites resulting from, for example, a factory closure or small sites such as a residential conversion or a new flat over a shop (PPS3 paragraph 59 footnote 31).

1.4.19 For clarity, in the context of determining past windfall rates, the "local plan process" comprises the SHLAA which informs the local plan land allocations.

1.4.20 In its calculation of its five year housing land supply the council has exercised its discretion to exclude future windfall sites for several reasons.

- All sites down to one unit (net) are monitored;
- Planning agents and developers are contacted to discuss the phasing of all outstanding planning permissions on sites of 5 units or more (net);
- Previously developed sites identified through the 2009 SHLAA have been included in calculations; and

- Sites with planning permission that are unlikely to be delivered within five years are removed from the calculation.

1.4.21 The NPPF states that local authorities may make an allowance for windfall sites but it does not say that they should. The decision is left to the local authority's discretion to include a windfall allowance provided there is compelling evidence to support the approach. A windfall allowance coupled with the depth of assessment of the council's land supply runs a high risk of double counting dwellings.

1.4.22 Kent County Council acknowledged the risk of double counting through the inclusion of windfall sites in five year calculations in its final publication 'Kent – KCC Area Housing Information Audit 2007/08: Housing land supply from unidentified sources (windfalls) report' (Appendix B). The report was written pre-NPPF, but some of the points are still valid. The County makes clear that the information contained in the report is for "*discussion, consideration and information purposes*" to assist local authorities in making informed decisions regarding the release of deliverable sites and that the information could be used to support longer term housing land assessments. 'Extant figures' are dwellings with planning permission that have not yet started to be built or are under construction. A planning permission lasts for 3 years.

- *"Extant figures represent land supply at a particular point in time (31st March each year). They are based and phased on the years monitoring data.*
- *The advantage may not always be in favour of using small site extant permissions over windfall estimates.*
- *Extant figures have a short and finite life span; they will cease to be included in the land at the expiry date of the permission (Current 3 years).*
- *They will be phased for the short term rather than considered for long term planning (If a small 'windfall' site is developed it is usually completed within 5 years of the permission being granted).*
- *Extant figures cannot be used as well as 'windfalls' if this happened there will be an element of double counting" (Extract from KCC Area Housing Information Audit 2007/08).*

1.4.23 The council's five year housing supply includes extant figures but excludes windfall sites so there is no risk of double counting. This is because, for example, an unidentified site on previously developed land which is granted planning permission after 1 April 2012 will be included in the rolling five year supply calculation at 1 April 2013 as an extant permission.

1.4.24 For the same reasons that a windfall contribution is not included in the five year calculation, a discount rate is not introduced for the non-

implementation of planning permissions that contribute towards supply, i.e. for permissions that ultimately may not materialise. The use of a non-implementation discount is not addressed by the NPPF but there must be a reasonable balance. If a local authority goes to great lengths to quantify the unexpected windfall contribution, then it should be reasonable to factor in a discount for planning permissions that will not be built within the five years.

1.4.25 A moratorium on the release of greenfield sites allocated in the Maidstone Borough-wide Local Plan 2000 was introduced as a result of former national planning guidance that led to the production of the council's Urban Capacity Study in 2002 and its update in 2006. The Studies identified previously developed land that had potential for housing redevelopment. The 2009 SHLAA also identified previously developed sites with housing potential, in addition to greenfield sites. Consequently, for the past 13 years the council has been relying on identified previously developed land as a major contributor towards its rolling 5-year supply of housing land. This has been possible through the granting of planning permission for the majority of the unconstrained sites identified in the Urban Capacity Studies, many of which were located within and adjacent to the town centre and have been redeveloped for flats at very high densities.

1.4.26 Windfall calculations are not a pure arithmetic extrapolation of past trends based on past completion rates. An element of judgement has to be used. On 13 February 2013, Kent County Council produced a schedule of estimated completions of large and small "unidentified sites" for all Kent districts between 1991/92 and [for Maidstone] 2010/11 (Appendix C). This table has been populated by Maidstone Borough Council data from the annual housing land availability surveys. The total of 332 dwellings for Maidstone comprises all completed units on previously developed sites that have not been allocated in a local plan. To include an allowance for this level of windfalls in the council's five year supply would most likely result in double counting because the supply calculation (table 1) includes an assessment of all extant planning permissions at 1 April 2012. The same reasons for excluding windfall sites from five year supply apply at April 2013, especially as the council is producing an up-to-date SHLAA and making land allocations in the emerging Maidstone Borough Local Plan, some of which will be completed within the next five years.

1.4.27 There is no compelling evidence that past windfall rates will continue to materialise at the same rates in the next five years or that they would provide a reliable source of supply. In fact, although completion rates in Maidstone have remained high², planning permissions on

² AMR 2011/12 table 3.1

previously unidentified sites are not materialising at the same rates as before.

1.4.28 The council has historically included a windfall element in the latter years of its 20-year housing trajectories where land supply is far less predictable, but the trajectory is not the same calculation as that for five year supply.

1.4.29 The rigorous assessment of the council's housing land supply and the identification of sustainable development sites continues, through two recent calls for sites together with an assessment of previously developed urban sites for the emerging new SHLAA, which will support the proposed allocation of sites in the consultation draft of the Maidstone Borough Local Plan. This will cover numerous housing sites down to five units. Meanwhile, all sites that are granted planning permission between 1 April 2013 and 31 March 2014 will help to address the council's shortfall in five year housing land supply when the calculation is rolled forward at 1 April 2014. It is important to understand, however, that all components of the calculation will be updated including an additional year of the housing target.

Counsel Advice

1.4.30 At the meeting of the Maidstone Borough Council on 2 September 2013 the council's legal advice on housing land supply and windfall allowance was attached to the agenda (attached at Appendix D of this report). The advice concludes:

"There is no doubt that officers correctly understood paragraphs 47 and 48 of the NPPF. They were well aware that a windfall allowance can be included if there is compelling evidence to do so. The core of the NPPF policy is for councils to identify sites which will deliver housing and in that sense including a windfall allowance is against the grain of policy. 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".

Conclusion

1.4.31 Until very recently, the council has been able to demonstrate a five year supply of housing land but, using the methodology outlined in this report, it was not the case at 1 April 2012 or at 1 April 2013. The presumption in favour of sustainable development (NPPF paragraph 14) prevails.

1.4.32 The NPPF does not state that it is mandatory to make an allowance for windfall sites in five year housing land supply calculations. There is no compelling evidence for the council to do so. Consequently, there

is no risk of double counting projected windfalls and extant planning permissions.

1.4.33 The council has sought advice from its own specialist Planning Counsel, which has endorsed the position on how five year housing land supply has been calculated, including the exclusion of a windfall site contribution.

1.4.34 Sites granted planning permission since 2013 will count towards five year supply as the calculation is rolled forward.

1.4.35 The Committee will receive a PowerPoint presentation at the meeting that will further clarify the methodology used for calculating five year supply and the judgements applied. This report is to assist the Committee in their deliberations, and it seeks a recommendation to Council that the methodology and judgements that have been made to calculate the council's housing land supply are sound.

1.5 Alternative Action and why not Recommended

1.5.1 Members could conclude and advise Council that they are not satisfied that the methodology used and judgements applied in calculating the 5 year supply are sound.

1.6 Impact on Corporate Objectives

1.6.1 A sound and robust methodology used to calculate the council's five year housing land supply is crucial, in order for Members and Officers involved in the development management process to make proper decisions on planning applications. This supports the objective of corporate and customer excellence.

1.7 Risk Management

1.7.1 There is a risk that a flawed methodology underpinning the calculation of five year housing land supply could result in an over or under estimation of the council's position, which would lead to unsound decisions on planning applications by Members and Officers, which could lead to those decisions being judicially reviewed. Scrutiny of the methodology for the calculation to the Council's satisfaction will mitigate this risk.

1.8 Other Implications

1.8.1

1. Financial
2. Staffing

X

3. Legal
4. Equality Impact Needs Assessment
5. Environmental/Sustainable Development
6. Community Safety
7. Human Rights Act
8. Procurement
9. Asset Management

X

1.8.2 Legal services have been retained to advise the council on the robustness of its methodology for the calculation of five year housing land supply. Provision for legal advice has been made within the local plan budget.

1.9 Relevant Documents

National Planning Policy Framework 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

Annual Monitoring Report 2011/12

http://www.maidstone.gov.uk/_data/assets/pdf_file/0019/21673/Annual-Monitoring-Report-2011-12.pdf

Planning Policy Statement 3: Housing June 2011

http://www.housinglin.org.uk/library/Resources/Housing/Policy_documents/PPS3.pdf

Maidstone Borough Council Agenda 2 September 2013
<http://meetings.maidstone.gov.uk/documents/g2049/Public%20reports%20pack%2002nd-Sep-2013%2018.30%20Council.pdf?T=10>

Appendices

Appendix A: Sites with planning permission and five year phasing 2011/12

Appendix B: KCC Area Housing Information Audit 2007/08

Appendix C: KCC schedule of estimated completions of large and small unidentified sites for all Kent districts between 1991/92 and [for Maidstone] 2010/11

Appendix D: Maidstone Borough Council Housing Land Supply & Windfall Allowance Advice Note

Background Documents

None

<u>IS THIS A KEY DECISION REPORT?</u>		<u>THIS BOX MUST BE COMPLETED</u>	
Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If yes, this is a Key Decision because:			
.....			
Wards/Parishes affected:			
.....			