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## Appeal Decision

Inquiry held on 26-28 January and 2-3 February 2016

Site visit made on 2 February 2016

**by Simon Hand MA**

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

**Decision date: 10 March 2016**

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**Appeal Ref: APP/C3240/W/15/3010085**

**Land off Muxton Lane, Muxton, Telford, TF2 8PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Telford and Wrekin Council.
  - The application Ref TWC/2014/0612, dated 4 July 2014, was refused by notice dated 19 December 2014.
  - The development proposed is outline planning application for a residential development of up to 110 dwellings with associated access with all other matters reserved.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is for up to 110 dwellings on fields adjacent to Muxton Lane. Four fields are involved, with the bulk of the dwellings proposed to be on what was called the 'southern field' in the angle between Muxton Lane and Granville Drive. The remainder of the dwellings would be on the 'northern field' at the end of Granville Drive, which effectively protrudes into the countryside more than the southern field. The two other fields are proposed to be dedicated for access and nature conservation.
3. Prior to the Inquiry, the appellant made an outline application for up to 78 dwellings<sup>1</sup> on a reduced area of the site. This was refused on 25 November 2015 with four reasons for refusal. These briefly were that the site was in open countryside outside the development boundaries of Telford; it would be locationally unsustainable; it would be overly urban and possibly cramped and; loss of locally important grassland. The illustrative plan for the new application showed all the dwellings to be in the southern field, the northern field was now to be for access and conservation only. The appellant requested this alternative proposal be considered as part of this appeal, a request the Council opposed.
4. Having considered the matter I found that taking this alternative scheme into account would not offend any of the principles of the Wheatcroft Judgement<sup>2</sup>. The new application had been fully advertised and I was given a folder of

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<sup>1</sup> TWC/2015/0556

<sup>2</sup> Bernard Wheatcroft Ltd v SSE (1982) 43 P&CR 233 at 238

objections from third parties. These objections, and those of the Council in their refusal, were essentially the same as for the 110 dwelling scheme. There was no difference between the two, except for the deletion of dwellings from the northern field. The density of development appeared to be unchanged. At the Inquiry the Council raised a further objection that the smaller scheme might not be viable. Their concern was that the payments proposed for the open space would be higher, as there was to be more open space, but the profit lower as there were fewer houses. However, no viability evidence was provided to counter the appellant's figures and the open space costs seemed to be relatively small in the wider scheme of things. As the appellant pointed out the Council should be reassured by a properly worded condition. In my view therefore it would be open to me to restrict any permission granted by condition to a maximum of 78 dwellings and to exclude the northern field from development.

5. The appellants also provided an illustrative plan showing a 'pulled back' version of the 110 dwelling scheme, with less development in the 'northern field' and a woodland buffer along the edge of that field. There are consequently three possible alternatives, the original 110 dwellings occupying all the southern and northern fields, the 'pulled back' version and the 78 dwelling version with development only on the 'southern field'. I have considered all three versions throughout the analysis that follows.

### **Main Issues**

6. The main issues in this case are, the status of the policies relied on by Council; whether the Council can show a 5 year supply of housing land; the harm caused to the countryside and possible coalescence between Muxton and Lilleshall and; whether the site is locationally sustainable.

### **The Policy Background**

7. The Council rely on the saved policies from the Wrekin Local Plan 1995-2006 (adopted in 2000), the Core Strategy Development Plan Document (adopted in 2007) and the emerging Telford and Wrekin Local Plan 2011-2031 (eLP). The appellant argues that regardless of the outcome of the housing land supply issue the Council do not have any up to date policies relevant to this appeal. As a consequence, the bulletpoint of paragraph 14 of the NPPF which states "*where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits...*" is engaged. I shall consider the policies in detail below.

#### *The saved policies from the Local Plan*

8. The local plan is now very old. It is 16 years since adoption and 10 years since the period it covered has passed. Nevertheless, I agree with the Council that this does not necessarily make it out of date for paragraph 14 purposes, the relationship of the policies to the wording and spirit of the NPPF is also important.
9. Policy H9 is one of the few saved policies from the Housing chapter of the local plan. It is concerned only with housing in rural areas and the saved part of this policy says "*new residential development will be permitted only within the following suitable settlements – High Ercall, Tibberton [and] Waters Upton. All*

*proposals for new development within these villages must accord with policy H10 [which is saved and deals with scale]. Elsewhere in the rural area there will be a policy of refusing proposals for new residential development except that permitted under the exceptional circumstances detailed in Policies H18 and H24".* Those exceptions, for conversions and affordable housing, are irrelevant for this appeal. Essentially this is a blanket ban on any housing development in rural areas except for the three villages listed. I agree with the appellant that this does not sit comfortably with the general emphasis in the NPPF on housing development that is sustainable as defined in the NPPF. It is certainly not in accord with paragraph 55 of the NPPF which talks about allowing housing to enhance or maintain the viability of rural communities. The policy should be read as part of the overall suite of the housing policies in the local plan. In 2000, when the plan was adopted, the Council only needed to find land for 400 houses in the period up to 2006 and only 150 of these were to be located in the rural area in the villages identified in H9. The need for dwellings and their distribution are dealt with in policies not saved and the Council accept these original housing projections are now out of date. Most of the villages listed in H9 have been deleted from the policy, leaving the three mentioned above as the only place where rural housing can be allowed. Because of the absolutist way in which the policy is worded I do not consider it is in conformity with the NPPF and so it is out of date.

10. The Council also relied on OL6 from the local plan. This states "*throughout the District the Council will protect from development locally important incidental open land within or adjacent to built up areas where that land contributes to the character and amenity of the area, has value as a recreational space or importance as a natural habitat*". The Council invited me to give this its plain English meaning. Any parcel of land anywhere in the District can be covered by OL6 as long as it meets the definition in the policy. Firstly it must be "*locally important incidental open land*", which is "*within or adjacent to built up areas*" and secondly it must "*contribute to the character and amenity of the area*" or have "*value as a recreational space*" or have "*importance as a natural habitat*". I cannot agree with the Council that these defining characteristics are severely restricting and so mean that it is a clearly focussed policy. Firstly, no definition of "*locally important incidental open land*" has been provided, other than that the appeal site is such land as the locals obviously consider it important due to their opposition to any development and use of the footpaths across it. 'Incidental' to me would suggest 'left over' or related to an area but not a part of it, such as open space around a housing estate that is left as grass. This would not be the appeal site, which is agricultural land. The Council's approach, it seems, could apply to any urban fringe site as could the phrase "*contribute to the character and amenity of the area*".
11. In my view the meaning of OL6 is far from clear on its face. The explanatory text is equally unclear, but does say that "*many of sites to which the above policy will apply are within Newport*", and a number of OL6 sites are specifically identified on the proposals map. This does not suggest to me it was intended to apply to a wide range of unidentified sites around the urban fringe. The text also describes OL6 sites as helping "*to define the setting of surrounding development and adjacent buildings*" and can "*provide green space, visual variety and very local recreational opportunities*". OL6 sits within the Countryside and Open Land chapter which begins with OL1 "*All Open Land*". This seeks to protect the visual quality of all land which is not developed and is

not saved. It is followed by a series of policies which explain *"the Council's approach to the protection and enhancement of open land...through policies OL2-OL8"*. These seek to protect designated areas such as AONBs (OL2), the Green Network (OL3-5), open countryside (OL7) and agricultural land (OL8). OL6 thus seems to sit within a suite of policies which deal with different aspects of *"All Open Land"*. The Council argue elsewhere that the appeal site lies in the open countryside, which would have been covered by OL7, not OL6. Given the description of OL6 in the explanatory text and that its role seems to be circumscribed by other OL policies, I do not think that it applies to the appeal site at all, but seems, although it is not at all clear, to deal with incidental open land within larger urban areas and villages that otherwise would be unprotected and vulnerable to development. I note OL6 was not mentioned in the reasons for refusal for the original 110 dwelling application. I can only agree with the appellant that the Council are stretching OL6 to cover a gap left by OL7 and that the appeal site is not an OL6 site.

12. The final local plan policy is OL11 which deals with trees and woodland. The proposal will lead to a loss of hedgerow where the access points are to be made. Part of the hedgerow would be transplanted to elsewhere on the site. It is true that a hedge is often comprised of tree species that have not been allowed to grow, and that there are trees dotted along the hedge line. Nevertheless, it is not immediately obvious that a policy for trees and woodland applies to hedgerows. The explanatory text does not mention hedgerows at all. There is a policy at T20 that seeks to protect hedgerows along roads in rural areas from development, which would seem to be the relevant policy except that it has not been saved.
13. The wording of OL11 itself also suggests it is not directed towards hedgerows. It says the Council will *"seek to retain and enhance the contribution that trees and woodland.....make to the landscape character of the District. This will be promoted by:-"* and three sub clauses follow which deal with the making of TPOs; woodland management and planting new trees and hedgerows. This is the only mention of hedgerows, in a rather throw-away line, which encourages new hedgerows to be planted. It does not refer to the loss of hedgerows. There will be new hedgerow planting as part of the proposed scheme.
14. The policy continues by opposing proposals that *"would result in the loss of trees which make a valued contribution to the character of the landscape, a settlement or its setting..."*. No one has made such a claim for the scatter of trees along Muxton Lane, especially as most will not be affected by the proposal. Consequently, I do not consider that OL11 is relevant or if it is, the proposal is not contrary to its provisions.

### *The Core Strategy*

15. It is common ground that CS1, the principal housing policy is out of date as it relied on housing figures drawn from the Regional Spatial Strategy which the Council consider are anachronistic. CS7 deals with *"The Rural Area"*. Like H9 it restricts rural housing to three villages. Outside of those villages *"development will be limited and within the open countryside will be strictly controlled"*. I agree with the Council that this is a three pronged strategy, directing housing to certain villages, but assuming in other villages *"limited"* housing will be possible, but strict controls apply in open countryside. This seems to me to be

entirely on all fours with the NPPF and paragraph 55 which seeks very much the same level of control.

16. The key issue for this policy is whether the site is in the open countryside or even in a rural area at all. The appellant argues that it is only in the countryside because the CS defines all land outside of development boundaries to be countryside. Those boundaries were drawn up in the light of the housing commitments taken from the RSS which are out of date and so it is unreasonable to rely on those boundaries until the eLP is at a much more advanced stage and there is greater certainty in the allocation of housing numbers and sites. I shall deal with this argument in my conclusion to the housing land supply arguments below.
17. Policy CS11 is headed "Open Space" and seems to be the CS equivalent of OL6, except that it is more clearly worded. It will protect open space "both formal and informal". I do not think an agricultural field can be considered to be informal open space, and the explanatory text clearly suggests the policy refers to open space within the urban areas not to random fields on the edge of towns. This is further supported by the statement in the text that further work will be undertaken to support a Development Control Policy identifying and protecting open spaces of particular value. The policy never emerged but work was carried out in accordance with the old PPG17 "Open Space, Sport and Recreation". This identified and assessed land across the whole Borough but at no point did it consider the appeal site. It is clear to me that like OL6, CS11 is not aimed at agricultural land outside of settlements and so is not relevant to this appeal.
18. Policy CS9 refers to accessibility and social inclusion and so clearly is relevant and will be discussed below. In coming to the above conclusions on the Council's policies I have borne in mind the recent appeal decision<sup>3</sup> I was given where the Inspector concluded the housing policies were consistent with the framework. That case was for a single dwelling in the open countryside that was determined by way of the written representation procedure. It does not seem that the Inspector was presented with any arguments as to the relevance of those policies nor arguments as to the housing land supply situation, it is therefore entirely reasonable for us to reach different conclusions as to the applicability of those policies given the radically different situations of the two appeals.

#### *The emerging Local Plan (eLP)*

19. The eLP is at a very early stage and the Council only rely on one policy from it, NE4 Strategic Landscapes. This policy was not referred to in the reasons for refusal, but the strategic gap argument is important for the Council. The eLP identifies three strategic landscapes and NE4 provides protection for them against "inappropriate development.....which would cause detrimental change to the quality of landscapes in the areas...". The three landscapes are the Wrekin Forest, which includes part of the Shropshire Hills AONB, the Weald Moors and the Lilleshall Gap.
20. The appellant argues that this policy suffers from an identity crisis, as Wrekin Forest and Weald Moors are landscape designations, whereas the Lilleshall Gap is a strategic gap, which has been identified for policy not landscape reasons.

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<sup>3</sup> APP/C3240/W/15/3065782 Site Visit 17 November 2015

While I agree the two landscape areas do seem to be different in substance from the Lilleshall Gap I am not sure this leads to an identity crisis that undermines the purpose of the policy. There seems to me to be no reason why a policy cannot combine landscape and policy designations under the heading "Strategic Landscapes". Having taken a policy decision to protect the Lilleshall Gap the Council drew up the boundaries based on a detailed landscape assessment, which seems wholly appropriate to me. Part of the site, the 'northern field', lies within the Gap, but the rest is outside. I therefore consider this policy is relevant but I can give it only limited weight due to the early stage of the eLP.

### **Five Year Housing Land Supply**

21. The Council have rejected the targets and supply situation as outlined in the CS and have started again with an Objectively Assessed Housing Need (OAN) provided by independent consultants, Peter Brett Associates (PBA). This concludes that the Council need to find land for 497 dwellings per annum (dpa). The appellant appointed their own consultants, Barton Wilmore (BW), to produce a rival OAN, which found that 961 dpa are required. The appellant has also sought to question a number of other assumptions that underpin the Council's housing strategy by arguing that there should be a 20% buffer applied because of persistent under delivery, that a previous shortfall should be added to the figures and that the identified supply is over-optimistic. However, even the worst case scenario identified by the appellant, using the Council's OAN produces a 6.9 year supply. The worst case using the appellant's OAN produces a 3.9 year supply. The reliability of the OAN is thus crucial to the housing land supply argument.

#### *The rival OANs*

22. BW's approach differs from PBA in three main areas. Household formation and suppressed need adds 120 dpa to the PBA figure, migration levels add 32 dpa and employment trends and forecasts add 313 dpa. Because BW began from 1 less dpa than PBA these additions convert 496 to 961 dpa.
23. On household formation and suppressed need BW took the 2012 population forecasts produced by DCLG and added in an allowance for extra household formation. They argued that the PPG advises figures should be adjusted upwards (and so more houses would be needed) to take account of the suppressed need caused by the economic recession. I was specifically referred to paragraph 15 of the PPG. However that is not how I read that paragraph. It says that "*The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing.*" And goes on to add "*local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply*". It is clear there is no adjustment required because of a national housing crisis. Adjustments rely on local factors. The evidence put to me was that Telford had a better record than the national average for house prices and overcrowding and little different for concealed families. In particular the affordability ratios were much better for Telford than Shropshire, the West Midlands or England and Wales.

24. BW's counter argument was based on projections from the 2008 census compared to the 2012 figures. This showed a growing gap in certain crucial age groups. In other words household formation should have been higher according to the 2008 projections but had been suppressed by the economic downturn between 2008 and 2012. As a result, the Council should adjust upwards to get back to the 2008 "preferred" household formation figures. PBA countered that the 2008 projections had been shown to be inaccurate and could not be relied upon. But even if they could be, they dealt with the national position, the PPG was concerned that the OAN should only be adjusted for specifically local issues, and this would seem to be the case to me.
25. The appellant referred to an appeal decision for an inquiry held in November 2015 in Leicestershire<sup>4</sup>, where the Inspector accepted there should be adjustments for worsening affordability and concealed households. However I can see no mention in the decision as to whether that was on a national or local scale and I do not have the evidence he was shown. As the PPG is clear it is local issues that are important I can only assume that was the case in this decision or that it was not an issue that was raised.
26. Migration trends seemed to rely on which model was used. PBA relied on the 2012 DCLG rates and adjusted upwards as they felt they did underestimate demand slightly. BW merged the 2008 and 2012 figures to get a longer trend. This latter approach added only 32 extra dwellings to the figures, but again I was referred to the PPG which advises the 2012 figures should be the starting point as they "are the most up-to-date estimate of future household growth"<sup>5</sup>.
27. The employment trends and forecasts argument turned mainly on the use of differing activity rates. If activity rates are lower then for a given number of jobs more workers are required and so there is a greater housing need. BW used activity rates derived from Kent County Council, which were often used in OAN calculations around the country, and were more pessimistic than those used in the PBA model, although there is no evidence to suggest that one should be preferred over the other. One effect of the PBA figures was to assume a high level of activity rates amongst older people which BW considered to be excessive. However, when PBA put the Kent CC activity rates through its own model, the outcomes were little different because with lower activity rates there is also lower economic activity as a whole and so less demand. PBA suggested BW had used lower activity rates but kept job predictions the same, hence the increase in workers and houses, whereas in fact job creation would fall, offsetting most of the upward pressure on housing caused by lower activity rates.
28. I am not a housing statistician and it is not the purpose of this appeal to provide a definitive criticism of the Council's OAN. Much of the argument seemed to turn on the exact nature of the model that was used and the inputs that were fed into it. However, if the appellant had been able to demonstrate obvious shortcomings that would have affected my assessment of the reliability of the OAN. No doubt the figures will come under renewed scrutiny during the eLP process and I do not wish in any way to prejudge that, but on the basis of the evidence I heard, I do not consider that the appellant's criticisms were sufficiently well founded to suggest the Council's OAN was unreliable and I shall treat the OAN as the best indicator of housing need that is available.

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<sup>4</sup> APP/G2435/W/15/3005052

<sup>5</sup> PPG paragraph 016

29. Having reached this conclusion there is a further, policy objection, to the OAN. The Council themselves are looking to provide more housing than suggested by the OAN. The latest version of the eLP is looking to provide 778 dpa. They have also consulted on other figures; one as high as 1000 dpa<sup>6</sup> and the OAN figure is lower than the average of completions since 2011, which is 811 dpa. Given this, the appellant argues, the OAN cannot be said to be either realistic or consistent with the NPPF requirement to “boost significantly the supply of housing”. I have difficulty with the argument that the OAN cannot be realistic simply because it is lower than previous targets or recent completion rates, there is nothing in Government guidance that suggests an OAN should lead to an increase in housing rates. In this I am following the Inspector in a recent decision in the Borough<sup>7</sup>. The Council argues it has adopted a growth agenda, as befits a new town with plenty of industrial/commercial land available for development. This will meet the NPPF requirement to “boost significantly the supply of housing”, increase the supply of affordable housing, which it is accepted is needed, reduce commuting and recognise the Borough’s role as a sub regional hub in promoting prosperity across the Marches Local Enterprise Partnership<sup>8</sup>.
30. It seems to me therefore the OAN represents exactly what it says, whereas the Council are moving forward with a “policy on” figure that is larger. Bearing in mind this approach has yet to be tested in the eLP examination, it does not seem an inherently unreasonable position for the Council to take and does not effect my conclusion on the usefulness of the OAN.

#### *Housing land supply*

31. There are three main disagreements here; the use of a shortfall, the size of the buffer and the likelihood of identified sites delivering as the Council claim. In April 2013 the Council issued a Housing Land Supply Statement. This was based on the CS figures from 2006 to 2013. A total of 8050 houses should have been built and only 3638 were. There was a shortfall of 4412 houses and the Council accepted it was a persistent under deliverer and so a 20% buffer should be applied. In March 2015 a new Housing Land Supply Statement was issued based now on the PBA produced OAN and later updated in April 2015. This provided figures back to 2011. On the basis of an OAN of 497 the Council had provided too many houses in the period 2011-2015, there was no shortfall and no persistent under delivery, it therefore applied only a 5% buffer.
32. The appellant accepts the shortfall should be calculated only over the period of the OAN, as the Council have done, but they argue it was actually 601 dwellings as the true OAN was 961 dpa. I have dealt with the OAN argument above and do not believe there is sufficient evidence to suggest the PBA OAN should be set aside, therefore I consider there is no shortfall.
33. The Council argue there has also been no persistent under delivery. They have exceeded their targets for the last four years when measured against the OAN. They rely on the Zurich<sup>9</sup> judgement that they are starting again with a clean slate as they now have a robust OAN and so should not carry forward any shortfall from before 2011 and so cannot be shown to have persistently under

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<sup>6</sup> Proposed Housing and Employment Sites (2014) (eLP document)

<sup>7</sup> APP/C3240/W/15/3003907 (Hearing 20 May 2015)

<sup>8</sup> eLP Chapter 5 and Technical Paper – Housing Growth (2015) section 5

<sup>9</sup> Zurich Assurance Ltd v Winchester CC [2014] EWHC 758 (Admin)

- delivered. The appellant argues that Zurich relates only to a shortfall, hence they accept any shortfall calculation begins in 2011 when the OAN begins, but persistent under delivery is different. Here one has to look at a longer period and determine whether or not the Council has delivered on its housing targets.
34. I agree that the Zurich case is restricted to the issue of the shortfall. The Court held that when modelling the housing figures for 2011-2031 in a self contained model it would be wrong to add in a "shortfall" from 2006-2011 which had been calculated on a different basis. The methodology for deciding how many dwellings were required for the period 2011-2013 was a stand-alone calculation which had already taken into account the housing position in 2011 as its starting point. In my view that is different from arriving at a modelled figure and then asking whether it should be uplifted by 5% or 20% depending on the Council's past record of underdelivery.
35. Looking back to 2005-06 the Council missed the target of 1330 houses a year for every year until the target was reduced to 497 in 2011-12. Then they exceeded it comfortably. In other words they have 6 years of missed targets followed by 4 years of exceeded targets. This is a similar proportion to Cotswold DC in 2015 when the Inspector in an appeal<sup>10</sup> there found that 12 years of undersupply and 11 years of meeting targets did not amount to a "persistent under-delivery". I agree that on the basis of the figures alone there has not been a "persistent" failure to meet housing targets. However, a problem is that the 1330 "target" is not a target in the conventional sense. The 1330 figure was taken from the Wrekin Local Plan and the Core Strategy and ultimately derived from the Regional Spatial Strategy for the West Midlands which set a maximum figure. The objective was to encourage housing in the Borough because of its role as sub regional focus of development. By implication the maximum was a figure of hope that was not meant to be exceeded and does not seem to have been underpinned by any robust analysis of its reliability. The Council argue that the fact that housing numbers were nowhere near the maximum is no indicator of failure. I am inclined to agree with this viewpoint, which at the very least makes the underdelivery in the years before 2011 less serious. Of course the OAN is untested and cannot be given the same weight as an up to date local plan housing figure, but as I conclude above, for the purposes of this appeal it is the best indicator of housing need that is available. In the past the Council has accepted it has a persistent record of underdelivery but that was before the new OAN was produced. I accept their argument that they were simply wrong in doing so. Taking these matters together, they only strengthen the Council's case that there has been no persistent under-delivery and so only a 5% buffer is required.
36. The Council have identified sites which they claim will supply 5439 dwellings, based on data as at 1 April 2015. The appellant argued that only 4866 were actually deliverable. Both parties went through the table of sites and eventually two separate figures were agreed. The Council accepted that 34 houses should be excluded leaving 5405. The appellant accepted a figure of 5016<sup>11</sup>. The difference between the parties was thus reduced to 389 dwellings, which is not significant when considering the land supply figures.

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<sup>10</sup> APP/R3650/A/14/2223115, Inquiry August 2015

<sup>11</sup> Inq Doc 34 section headed 'Notes from the Appellant'

37. However, I agree with the Council that many of the appellant's comments on the sites in the list such as that they have been on the market for several years with no interest, or that reserved matters have not been applied for, apply equally to the appeal site. If planning permission were to be granted there is no identified developer. The site would go on the market along with the other sites in the list. The appellant was not able to show any specific constraints affecting any of the sites, except for issues concerning the signing of s106 agreements. In every case the Council were able to explain what those issues were and why they were not serious. It would seem the majority of delays were due to the market, and as that is now picking up there is no obvious reason why any of the sites should be discounted from the supply.

*Conclusions on 5 year housing land supply*

38. Bringing together this section on housing land supply, I do not find the appellant's attempt to undermine the Council's OAN to be persuasive and I consider it is reasonable to accept the OAN as the best figure for calculating housing land supply there is at the present time. I do not consider that a shortfall should be included separately in the housing figures as that is already taken into account in the OAN. I do not consider the Council has been a persistent under-deliverer of housing and so a buffer of 5% is applicable. I am not persuaded by the appellant's analysis of the delivery position and accept the council's figure of 5405.
39. The result of this set of conclusions is that based on the evidence that was put to me at the inquiry I conclude the Council have 10.4 years of supply. If I used the same set of assumptions as above, but factored in the BW OAN of 961 dpa, the Council still have a 5.4 years supply. If I accepted that the BW analysis of the OAN had some merit, and therefore took the Council's own eIP figure of 778 dpa as a reasonable proxy figure, and used all the appellant's worst case figures – a shortfall of 601, a 20% buffer and only 5016 dwellings identified as deliverable, the Council have a 4.7 year supply. Just removing the shortfall figure leads back to a 5.4 year housing land supply figure. The object of considering these various scenarios is to show that only by accepting the appellant's most serious criticisms can the Council be shown to have a shortfall in supply. Even a relatively modest adjustment of the appellant's figures leads back to a 5 year figure. Consequently, even if the Council do not have 10.4 years as I suggested, I am confident, on the evidence put to me that they have more than 5 years. Paragraph 49 of the NPPF is not, therefore, applicable.
40. This does not mean the Council's housing policies are automatically considered to be up to date. I have already concluded that H9 is out of date. CS7 is only relevant to the site as the policy covers all the land outside of the development boundaries of the urban areas, in this case Telford. The appellant argues these boundaries have to be out of date as they are predicated on housing targets that are themselves out of date. The Council argue that as they can comfortably demonstrate a 5 year supply of housing land there is no need to change these boundaries on an ad hoc basis. Where they have been altered to allow for more development this is being taken forward as part of the eLP process. The boundaries in this part of Muxton are unchanged in the eLP and so are still material. I find this argument to be persuasive. The logic of my conclusions on the 5 year housing land supply argument is that at the moment it would seem the Council can find plenty of land to meet its housing needs and so there is no need to insist that all its development boundaries should be

abandoned. Consequently, I consider CS7 is up to date and relevant in NPPF terms.

### **Harm to the Countryside and the Possibility of Coalescence**

41. As a result of the deliberations above the relevant policies for this section are CS7 and NE4. Muxton Lane runs south-eastwards from its junction with the main Muxton to Lilleshall Road to end at a golf course, about 500m beyond the site. It essentially runs around the edge of Muxton except that from the junction mentioned above as far as the site, there is a narrow band of housing on the eastern, rural side of the Lane. The last houses on this side are grouped around Granville Drive which clearly sticks out into the countryside towards Lilleshall. From Granville Drive to the golf course the lane is bounded by houses on its western side and fields on the opposite side. Its western side has a pavement and neatly clipped hedges with houses behind them and the eastern side a grass verge and hedgerow. The fields beyond the Lane are small and divided up by hedgerows and tree belts as the land slopes gently down to a pair of streams, one of which bisects the site and one forms the eastern boundary. Beyond the further stream the land rises slightly to form a large open plateau which stretches as far as the road to Lilleshall Abbey and beyond that is a distinctive hill around which the village of Lilleshall is grouped. The hill has a monument on top which is a local landmark and from where there are sweeping views back across Muxton towards the Wrekin.

#### *Landscape issues*

42. The appeal site comprises four fields. The largest is in the angle between Muxton Lane and Glanville Drive and would take about 78 dwellings. It was called at the Inquiry the 'southern field' and is bounded by the nearer stream. To the east between the two streams are two fields that are intended, in all the various schemes, to be open space or conservation land. Joined diagonally to the 'southern field' and lying beyond Glanville Drive is the 'northern field' which would contain the rest of the houses. In the original application this would be entirely developed, but in the alternative scenario, the 'pulled back' scheme, development was restricted to the half of the field next to Glanville Drive. The new development would thus project less into the countryside towards Lilleshall than originally proposed. In the 78 dwelling scheme this field would be entirely open space. Apart from the development beyond Glanville Drive, the site would appear to be a rounding off of development on the eastern side of Muxton Lane as its southern boundary tapers down towards the lane. I agree with the appellant that the boundaries are defensible and do not immediately suggest an opening up of further development sites along the Lane.

43. The appellant was keen to characterise the site as urban fringe, which of course it is, but it is not 'urban fringe' in the sense of being lower quality land dominated by the urban area such as is often found on the edge of large conurbations. It is actually part of a very pleasant and attractive strip of countryside. The Council made the point that the housing on the western side of Muxton Lane did not, generally, front onto the Lane, but was built facing into the housing estate, it was the backs of the houses and their rear gardens that bordered onto the Lane, which reduced the sense of hard urban edge. I agree that walking along the Lane there was a stronger sense of being in the countryside than being on the edge of a housing estate. This feeling is accentuated when standing at the end of Granville Drive. Here the road ends

at the 'northern field' and there is an informal path across the field towards the stream where it meets two rights of way that cross the 'southern field' and head off across the plateau towards Lilleshall. There are fine views across the 'northern field' towards the prominent monument.

44. The site lies in an area characterised as "estate farmlands" in the Shropshire Landscape Typology, but of more relevance is the landscape character assessment of various sites proposed as part of the Strategic Housing Land Availability Assessment (SHLAA). A Landscape Sensitivity and Capacity Study was carried out for the Council in 2009 and updated in 2014, looking at various SHLAA sites. Three of these ring the appeal site, although it is notable the appeal site was not considered during the SHLAA process. SHLAA site 3-74 is the large open plateau fields lying to the east of the site. I agree they are quite different in character from the appeal site and quite obviously are sensitive to development. Site 4-64 is a parcel of land lying on the other side (northern side) of Granville Drive and 6-64 is a parcel of land adjoining the south-eastern boundary of the appeal site. 4-64 is described as a "*pleasant fine-grained landscape*". Its value was in its "*small scale pattern and hedgerows which complement the surrounding landscape and help integrate the settlement edge*". Both comments seem to me to characterise the appeal site as well. The description goes on to say the hedgerows and enclosure would also provide screening for potential housing which is true of the appeal site too. 6-64 had an old and rare field pattern with ecological value which was susceptible to change and was very sensitive to housing which would intrude into the open countryside. The appeal site seems to me to be more closely linked to 4-64 than 6-64, especially as those parts of the site that would be most sensitive to housing intruding into the countryside are mainly the fields which are to be open space. 4-64 was graded medium but the appellants grades the appeal site as "medium to low medium" in SHLAA terms. I can see no reason why it should not be "medium" as was 4-64, especially as it is less surrounded by existing development than 4-64.
45. The appellants' landscape assessment considers the site's susceptibility to new residential development to be medium to low. This is strongly influenced by the urban fringe setting. As I concluded above I consider this influence has been exaggerated. In this part of Muxton the urban edge is not as strong or as prominent as in other areas, but even so I would not like to characterise the sensitivity of the site as anything more than medium.
46. The visual impact of the proposed development was much discussed at the Inquiry. The effect of leaving a broad area of fields and hedgerows between the development and the open fields to the east, along with extra planting means the housing would be well screened. Views into the site from the footpath across the plateau would be restricted, and after new growth had matured the houses would only be glimpsed. From the monument there are clear views across the site, but again, because of the hedgerows and trees the impact of the housing would be reduced. There was much discussion as to exactly what would be seen by the naked eye. It is clear to me the bulk of the site would be well screened by existing and proposed vegetation, except for the 'northern field' which was more prominent in views than the rest of the site. This would clearly reinforce the existing prominence of Granville Drive which has already visually narrowed the gap between Lilleshall and Muxton. However, in the 'pulled back' scheme this effect would be reduced by the

proposed woodland buffer and the fact the houses would simply intrude less into the countryside.

47. There was much discussion as to whether the site was a valued landscape in terms of paragraph 109 of the NPPF. The meaning of this phrase is not defined in the NPPF and the appellant pointed to the advice in the Guidelines for Landscape and Visual Impact Assessment (GLVIA) which has a section on 'valued landscapes' and Box 5.1 of the guidelines sets out criteria to be used in judging whether a landscape is valued or not. The appellant's analysis was that the site was not a valued landscape for paragraph 109 purposes. I note the GLVIA advice is that there is no standard approach to assessments of this nature, but it is clear that there needs to be something more than that the site is pleasant and that local people like it for it to be considered a 'valued landscape'. The Council argued that it had been assessed as a valued landscape in the Strategic Landscape Study (2015) (SLS) that drew up the boundaries to the Lilleshall Gap. If this is so, then only the northern field can be considered to be a valued landscape. But even then, the policy that the SLS supports is in draft. Once adopted in the local plan there would be stronger argument this would be a valued landscape but at the moment I agree with the appellant that this is not a paragraph 109 'valued landscape'.
48. To conclude on the landscape issues, I consider the site forms a pleasantly attractive rural edge to Muxton and that Muxton Lane can best be described as semi-rural rather than urban fringe. The site is of medium susceptibility to housing development. It would be well screened from views on the ground, but the 'northern field' would intrude into views from the monument. The development of the 'southern field' could be described as a rounding-off of development on this side of Muxton Lane, but would still lead to the loss of a pleasant field that currently helps integrate the settlement edge. The site is not protected and is not a valued landscape and so its development would not contravene any policies of the NPPF, but it lies in the open countryside for development plan policy purposes and so its development is contrary to CS7.

#### *Gap policy and coalescence*

49. The 'Lilleshall Gap' is a policy construct, that may well have been in local planners' minds for many years, but was not given any formal status until the eLP and is therefore at an early stage of formulation. The boundaries to the gap have been drawn up based on the Council's landscape assessment. The boundary effectively splits the site in two. The two open space fields and the 'northern field' lie within the boundary, whereas the 'southern field' lies outside. If the development of the 'northern field' was considered to be "*inappropriate development ..... which would cause detrimental change to the quality of landscape in the area*" then it would be contrary to NE4 of the eLP.
50. In my view development of the 'northern field' would quite clearly cause a "detrimental change" to the area and would close the gap between Muxton and Lilleshall albeit only to a small extent. As the appellant has pointed out a gap policy and a landscape policy are really different things. The loss of the 'northern' field would clearly not cause the two settlements to coalesce, or even to come close to coalescence. But in my view a gap policy is not designed to allow the edges to be nibbled away until only one field is left separating two places. Having identified a gap, any closure of that gap would be harmful. This is not quite what NE4 says as it talks about "*detrimental*

*change to the quality of landscape*" and so it does seem more designed to deal with landscape harm. In that sense it perhaps does have an "identity crisis". Nevertheless, an important part of the quality of the landscape is the obvious visual gap it affords between Muxton and Lilleshall, and so the loss of the 'northern field' would harm that quality and be contrary to NE4. The degree of harm would be reduced by the 'pulled back' scheme as there would be less physical and visual encroachment, but it would still have a negative impact on the gap. I also need to take into account the extra planting and dedication of the eastern fields for open space and nature conservation.

51. The Council also argued the 'southern field' acted as a buffer to the gap, and its loss would be almost as harmful. I agree that development of a prominent or tall building in the 'buffer' could impact on the gap, both in landscape and visual separation terms, but that is not what is proposed here. It was never satisfactorily explained how the houses built outside the gap would affect the gap itself, except perhaps to make its protection more of a priority. Consequently, I find the development of the 'northern field' only would be contrary to NE4 and the harm to NE4 would be reduced by the 'pulled back' scheme. NE4 can only have limited weight because of the emerging status of the eLP.

### **Accessibility and Social Inclusion**

52. Both parties agreed that CS9 is a relevant and up to date policy. This policy aims to improve social inclusion and accessibility by "*making sure everyone is afforded a reasonable opportunity to access homes, work, schools, recreation and open spaces, sports facilities, healthcare, food shops and other key services*". The key issue here is not that everyone should be able to walk to all of these things but they should have a "*reasonable opportunity to access*" them. The policy goes on to suggest a number of issues of which the most relevant are that it will promote cycling and walking, minimise distances people need to travel and increase safety. This is in accord with the NPPF which at paragraph 29 says that "*people should be given a real choice about how they travel*" and at paragraph 37 says policies should encourage people to "*minimise journey lengths for employment, shopping, leisure, education and other activities*".
53. I was given an agreed list of distances of the site from various destinations. There are two bus stops, the primary school and a children's playground all within easy walking distance. I walked the most direct route which was along a path through the estate on the opposite side of the road to Marshbrook Way and it was a level and easy route. The path was unlit and lined by shrubs, but it was wide and hard surfaced. There was no sense of threat or any evidence of anti-social behaviour, as suggested by the Council. I cannot imagine that anyone would be put off using it. In any event the appellant has offered to provide lighting for the path in the event of permission being granted as part of a s106 agreement.
54. The bus stops provide access to a half hourly service to Telford and Wellington on Monday to Saturday. The appellant's bus isochrone shows that Wellington town centre as well as Horton Park Industrial Estate and Enterprise Park are all within 45 minutes travel time, Telford town centre is closer, within 30 minutes. Although the route is not direct, and does stop in the early evening (the last bus from Wellington to Muxton leaves the former at 18:15 and the last bus

from Telford is at 18:51) this still is a reasonable service allowing regular access to two town centres and major employment sites.

55. Further away, up to a kilometre, are a doctor's surgery, a church, several more bus stops and another playground. Within easy cycling distance are various pubs and hotels, a post office (1.4km), another primary school (2km) and Muxton District Centre with its shops and other facilities (1.5km). The nearest major supermarket is Aldi at 2.3km or Asda at 2.5km. I agree this is a long way to carry a weekly shop on a bicycle, but I doubt that anyone, unless they live next door to a supermarket, would do anything other than top-up shopping on foot or bicycle. However, that is not the test in either CS9 or the NPPF. The Council argued that as the percentage of Muxton households with access to 2 or 3 vehicles was higher than the Borough average this showed that Muxton was not a sustainable location. However, there could be a variety of reasons for this, not least household income, for which there was no evidence. I do not think that levels of car ownership in themselves tell us anything about access to alternative means of transport. I consider the site is reasonably well located so that people will have a genuine choice to carry out many of their day to day journeys on foot or bicycle. It is thus in accord with CS9 and the NPPF.
56. The Council also referred to the public sector equality duty and I have to agree with the appellant that this led to "*a strange diversion into the Equality Act 2010*". It was not the Council's case that the site was so remote as to render it impossible to travel anywhere other than by car, if that had been the case there might have been a point that this would discriminate against those who were less able or had no access to a car for whatever reason, but it was not. I conclude above the site is reasonably sustainably located and provides a genuine choice for people, whether less able or not, to access local facilities. In my view there is no discrimination against the groups cited by the Council, whose "*movements are encumbered by old age, disability, pregnancy or being accompanied by small children*".

## **Other Matters**

### *Prematurity and precedence*

57. The Council argued that releasing the site for housing would be premature and could undermine the delivery of two proposed urban extensions on this side of Telford, at Priorslee and Muxton. Together they will deliver some 2000 dwellings as well as supporting infrastructure. It was never clearly explained how the relatively modest number of dwellings proposed at this appeal would prejudice these major urban extensions. It was suggested it would set a precedent that would unlock all the land on the eastern side of Muxton Lane, but this is clearly not the case. Not only would each case have to be treated on its own merits, but the remainder of the countryside has different characteristics as the SHLAA analysis reveals.

### *Agricultural land*

58. There would be a loss of some agricultural land. Part of the site is grade 2 and the rest either Grade 3a or 3b. The two former grades are considered to be the best and most versatile agricultural land (B&MVAL). However, a lot of the land around this edge of Telford is in these grades and the loss would be relatively minor. The appellant pointed out that the Priorslee urban extension was predominantly grade 2, and the loss of some of the B&MVAL was inevitable

to provide housing in this area, not just on this site. Paragraph 112 of the NPPF requires that decision makers should “*take into account the economic and other benefits of the best and most versatile agricultural land*”, but only where “*significant development of agricultural land*” is being considered should poor quality land be used in preference to higher quality. The Council sought to argue that the “other benefits” included the landscape benefits that good quality agricultural land provided, although this could not be quantified in any way. I do not believe there is a direct link between agricultural quality and landscape value and none was demonstrated at the Inquiry. The loss of a small amount of B&MVAL is of some weight, but the loss is not significant and I shall give it weight accordingly.

#### *Bio-diversity and public access*

59. All three versions of the appellant’s scheme would provide for the positive management of several fields for nature conservation and tree planting schemes. There would be a loss of some of the hedgerow fronting the Lane, but this would be more than made up for by translocating part of the hedge and additional planting. Although some of the land would be lost to development, there would be a net gain for bio-diversity.
60. There are two rights of way cross the site and these would be preserved, along with additional public access to the nature conservation areas. How this would be managed along with the need to protect and manage these areas for conservation is not entirely clear as this is an outline proposal. However, the illustrative plan for the ‘pulled back’ scheme shows one field with restricted access and the other with a footpath around, as well as a new footpath through the northern field heading towards the junction of existing footpaths on the edge of the site. Although the quality of parts of the existing rights of way will be reduced where they run through the new estate, there will be extra paths created and so on balance there would be a modest improvement in public access.

#### *Local residents*

61. There were a large number of objections from local residents as well as a petition and several spoke at the Inquiry. In addition to the matters covered above there was considerable concern as to the ability of Muxton Lane to cope with the extra traffic. This was principally based on the assumption that 110 dwellings would have 220 cars, each used twice a day leading to over 100,000 extra car movements a year.
62. The appellant provided a detailed traffic analysis which concluded there would be no significant traffic issues and this was accepted by the Council. The appellant’s consultants modelled the traffic related to the development using the industry standard TRICS database which produced a trip rate of 2.7 departures and 2.6 arrivals per dwelling per day, which is somewhat higher than the local objectors’ figures. However, these movements are spread across the day. The bulk of departures and arrivals happen at the morning and evening peak as one would expect, but the trip figures are reduced to 0.41 and 0.4 per dwelling per day. Traffic counts of the junction with Wellington Road suggest this will still be operating well within capacity as will Muxton Lane itself.

63. There was also some concern about the effect of vehicle movements on the listed "crooked house", but there is no actual evidence to support any concerns. The relevant local school and doctor's surgery organisations were consulted and raised no concerns.

### **Conclusions**

64. The Council can demonstrate a five year housing land supply and so there is no immediate pressure to release further land for housing. Although paragraph 49 of the NPPF is not engaged, policies OL6, OL11 and CS11 are irrelevant for this appeal and policies CS1 and H9 are out of date as far as the NPPF is concerned, but equally policies CS7 and CS9 from the Core Strategy are both directly relevant and in accord with the NPPF. Policy NE4 from the eLP is also relevant, but of little weight because of the early stage of the local plan process. It follows that for the purposes of paragraph 14 of the NPPF the development plan as a whole is not absent, silent or its relevant policies out of date, and so paragraph 14 is not engaged.

65. The proposal would not lead to a loss of any protected or "valued" landscape in NPPF terms. The development of the 'southern field' could effectively round-off development on the eastern side of Muxton Lane and provide identifiable and defensible boundaries to development on that side of the Lane but this would be at the expense of the loss of a pleasant open field which currently defines the built up edge of Muxton and the urbanisation of this part of Muxton Lane. All the versions of the proposal are contrary to CS7 as they feature a significant number of dwellings in the rural area, and the dwellings on the northern field would intrude into the gap between Muxton and Lilleshall. The dwellings on the 'northern field' would also intrude into the view from the monument, although less so with the "pulled back" scheme. There would be a change in the semi-rural character of this part of Muxton Lane, making it more suburban. The site is reasonably well located so that people will have a genuine choice to carry out many of their day to day journeys on foot or bicycle and so is in accord with CS9.

66. The proposal would provide much needed affordable homes and would provide a net bio-diversity gain through the active management of several fields and also an increase in public access. I can give little weight to the economic benefits provided, nor to the provision of market housing. Paragraph 47 of the NPPF is clear that there should be a significant boost to the supply of housing, but it is also clear that this should be achieved by local authorities properly planning for the full objective needs of their areas through the local plan process. As the Council have a greater than five year housing land supply and are planning for an increase above their OAN in the eLP, then that should achieve the objective of boosting significantly the supply of housing. It follows that the appeal site does not need to be developed and if it were then other housing sites, which the Council have identified, would be in danger of either not being developed or being delayed. There would thus be no net economic benefit to allowing the proposal.

67. Because of my conclusion that neither paragraphs 49 or 14 of the NPPF are engaged the NPPF balancing act is straightforward. The definition of sustainability is the policies contained in paragraphs 18 to 219. I am giving little weight to the need to boost significantly the supply of housing for the reasons outlined above but weighing in favour of the appeal is the provision of

affordable housing, a net bio-diversity gain and an increase in public access. Against the proposal is the loss of a small amount of grade 2 and 3a agricultural land. In addition in this case the development is contrary to policy CS7 and to emerging policy NE4. The development would urbanise a semi-rural lane and intrude into the open countryside. Part of the development would also intrude into the Lilleshall gap and would harmfully intrude into views from the monument in Lilleshall. It is this harm which policy CS7 and (bearing in mind its early stage in the development plan process) NE4 are designed to prevent through their control of development in the countryside and protection of the Lilleshall Gap. The adopted development plan led conclusion is, for landscape reasons, firmly against the proposal. In my view therefore while the scheme meets the economic and social goals of sustainability as described in paragraph 7 of the NPPF it performs badly in the environmental role as it does not contribute to protecting or enhancing the natural environment. On balance, therefore, I find it is not sustainable as defined in paragraph 6 of the NPPF.

68. The starting point for my decision is s38(6) and the proposal is contrary to policy CS7. Given my conclusion that it is not sustainable in NPPF terms there are no material considerations that suggest a different conclusion to that based on the development plan should be reached and consequently the appeal should fail.
69. The 'pulled back' scheme would cause less harm to the countryside, to views and to the Lilleshall Gap, but this does not alter the balance in favour of allowing the appeal. The smaller development proposal would cause less harm again to the countryside and would not intrude into the Lilleshall Gap at all. However it would still be contrary to policy CS7 and would provide less affordable houses. The planning balance is therefore against all three versions of the appellants' scheme and I shall dismiss the appeal.
70. I have considered the s106 agreement that has been drawn up and the conditions that were discussed at the Inquiry. These are all designed to deal with potential negative aspects of the development or to ensure the positive matters referred to above are provided by whoever eventually develops the site. None of them alter my conclusions above.

*Simon Hand*

Inspector

## **APPEARANCES**

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### INTERESTED PERSONS:

Phillip Loughlin	Representing Muxton Community
Brian Taylor	Local Resident

## DOCUMENTS

- 1 Transcript of Crane v SSCLG [2015] EWHC 425 (Admin)
- 2 Wheatcroft note on behalf of the appellant
- 3 Illustrative plan for alternative 'pulled back' 110 dwelling option
- 4 Responses from local residents to 78 dwelling application
- 5 Round table – housing land supply agenda
- 6 Round table – objectively assessed housing need agenda
- 7 Appellant's opening
- 8 Council's opening
- 9 Missing Table from PBA Proofs
- 10 Reworked figures by PBA using Experian baseline, including UK job figures
- 11 Revised 5 year housing land supply position figures
- 12 List of contested sites
- 13 MAFF Agricultural land classification guidelines
- 14 Photo-comparison from Lilleshall Monument
- 15 Agreed walking distances from the site
- 16 Note on bio-diversity costings for the 78 dwelling scheme
- 17 Transcript of Zurich v SSCLG [2014] EWHC 758 (Admin)
- 18 PPG Extract – Natural environment
- 19 Extract from PPG6(1996) Town Centres and Retail Developments
- 20 Muxton Community Observations Report
- 21 Draft s106 agreement
- 22 Note on CIL Compliance
- 23 Transcript of Moore v SSCLG [2015] EWHC 44 (Admin)
- 24 Three local appeal decisions
- 25 Note on viability of 78 dwelling scheme
- 26 E-mails from Oxford Economic Modelling
- 27 Revised copy of s106 agreement
- 28 B&MVAL map for the site
- 29 B&MVAL classification
- 30 Statement of Common Ground
- 31 Suggested conditions
- 32 Final signed copy of s106
- 33 Clean copy of agreed conditions
- 34 Agreed schedule of disputed sites
- 35 Note on sustainability from Mr J W Simmons
- 36 Council's closing submissions
- 37 Appellant's closing submissions
- 38 Note on housing land supply issues for appellant's closings