



Appeal Decision

Hearing held on 22 November 2022

Site visits made on 21 and 22 November 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Appeal Ref: APP/L2820/W/21/3282589

Land at Mawsley, Land nr Barnwell Court, Mawsley, Kettering, NN14 1GY, 481061, 275724

- 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 Jardin Smith International Berhad (Malaysia) against the decision of Kettering Borough Council.
 - The application Ref KET/2020/0215, dated 20 March 2020, was refused by notice dated 10 March 2021.
 - The development proposed is outline planning application for residential development for 43 dwellings, allotments, outdoor play space for Mawsley Day Nursery and additional car parking for the Community Hall with access only considered.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with approval sought for access. Layout, appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. Plans were submitted showing the access and an indicative layout of the site. Indicative plans have been treated as such.
3. The application was determined by Kettering Borough Council, which has since become part of a new combined authority, North Northamptonshire Council. The development plans for the individual areas within the new authority remain in force until replaced.
4. It was set out in written submissions, agreed in the Statement of Common Ground (SOCG) and confirmed at the hearing that policies of the Kettering Borough Local Plan (adopted 1995) are no longer saved, and that policies of the Kettering Site Specific Part 2 Local Plan, which were emerging policies at the time of the refusal were adopted in December 2021 and now carry full weight.
5. Prior to the determination of the application by the Council, and in response to feedback received during the application process, an amended Site Plan and Access Width and Sightlines Plan were submitted. As they were not referred to on the decision notice, separate consultation on them was carried out as part of the appeal. Having had regard to the Wheatcroft Principles, parties agree that the appeal should be determined with regard to these amended plans. Given the scale of the changes, the carrying out of consultation, and the agreement between the parties, I am satisfied with this position.

Main Issues

6. The main issues are

- whether or not the proposal would deliver sustainable growth compatible with the development plan,
- the effect of the proposal on the character and appearance of the area, and
- whether or not the proposal would make suitable developer contributions.

Reasons

Sustainable growth compatible with the development plan

7. The North Northamptonshire Joint Core Strategy 2011-2031, adopted July 2016 (the JCS) sets out the spatial strategy for the area, as well as the spatial roles of settlements at various scales. It also sets the housing requirement for the area, with an element of disaggregation across the Part 2 Local Plan areas and settlement types within them. It also supports development to meet local needs and aspirations in the rural areas. Detail on meeting these local plan area and specific rural needs and aspirations are deferred to Part 2 Local Plans.
8. Mawsley is a category A village, as defined in Policy RS1 of the Kettering Site Specific Part 2 Local Plan, adopted December 2021 (the P2LP). A greater level of growth is planned for such villages, than in other, more constrained or smaller villages. To deliver this level of planned growth, land to the West of Mawsley has been allocated for a residential development of up to 50 dwellings. The appellant has sought to draw comparisons between the assessments of that allocated site and the appeal site undertaken during the P2LP drafting and examination stages. However, whilst I note the similarities and differences that they highlight, it is not the role of this appeal to re-examine that very recently adopted plan.
9. The appeal site therefore lies outside the development boundary and as such, is within open countryside.
10. Policy RS4 of the P2LP resists development in the open countryside except for specific, limited circumstances. Criteria (a) allows for development in the open countryside in accordance with a list of JCS policies "*or national policy*". It is the view of the appellant that although the proposal does not fall under the remit of those specific policy exceptions, the phrase "*or national policy*" at the end of that list, allows me to consider *all* national policy expressed in the National Planning Policy Framework (the Framework), including the balance at paragraph 11dii. The appellant views this part of the policy as a safety valve within the development plan, allowing authorities to boost the supply of housing in accordance with the Framework.

11. This argument is based on the conclusions in *Cherkley*¹ to the effect that something in the supporting text, for example, a criterion not referred to in the policy itself, cannot have the force of, or trump the policy. Coupled with the well-established principles in *Tesco Stores*² around the meaning of policy, the appellant suggests that “*or national policy*” should be interpreted widely and not otherwise be restricted by the preceding parts of the policy or supporting text.
12. I disagree with this position.
13. At the hearing, the appellant confirmed that even in light of their position set out above, consistent with *Cherkley* the supporting text to a policy is still relevant to the interpretation and application of that policy. On that basis, I am satisfied that the reference in RS4a to “*national policy*” is a narrow one; restricted to the consideration of national policy in relation to the open countryside, such as isolated dwellings, redundant or disused buildings. Paragraphs 13.22 and 13.23 of the supporting text to RS4 clearly articulate how the policy is to be interpreted and then applied. To my mind this narrow interpretation is also consistent with a plain-reading of the words of the policy and its construction. As such, I do not find that the proposal benefits from Policy RS4a, and I am satisfied that this interpretation is consistent with the position put to me in relation to *Cherkley*.
14. Notwithstanding the issue around Policy RS4a set out above, the appellant does not dispute that the proposal is contrary to the specific development plan policies identified in the decision notice and in the case of the Council. Despite the specific policy conflict identified, the appellant suggests that the proposal accords with the development plan taken as a whole. In this, I cannot dispute that notwithstanding its open countryside designation, the location of the site, adjacent to Mawsley, is broadly consistent with the Spatial Strategy and policy distribution of new homes in the JCS. The location is also broadly consistent with the rural area general policies and categorisation of Mawsley in the P2LP. I also cannot dispute that Mawsley is, despite evidence at the hearing about reliance on the private-car, considered to be a sustainable settlement, capable of accommodating growth intended for the rural area.
15. National policy, largely expressed in the Framework sets out aspirations for the planning system, including the delivery of sustainable development and the objective of significantly boosting the supply of homes. The JCS and then the P2LP add further detail to these national aims, at increasingly granular and local level.
16. Whilst the appellant suggests that reading the development plan as a whole would lead to a finding that the proposal accords with it, I find no compelling reasons in the evidence before me to set conflict with specific, detailed policy aside in favour of policy compliance with broad principles. That would not be reading the development plan as a whole. To my mind, the emphasis on the importance of the plan-led system in the Framework reinforces this conclusion.

¹ Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC & Anor [2014] EWCA Civ 567

² Tesco Stores Ltd v Dundee City Council [2012] UKSC 13:

17. It is beyond doubt that the development plan should be read as a whole. It is also, beyond doubt that where policies in the development plan pull in different directions it is necessary to decide which is the dominant policy to which greater weight should be given. However, that is not the case here where the general and the detailed policies pull in the same direction.
18. I have found that the proposal accords with the broad principles set out in national policy, the JCS, as well as some of the policies set out in the P2LP. However, it directly conflicts with other policies. As there is nothing before me to suggest that the policies are otherwise out-of-date, then a reading of the plan as a whole must include them.
19. As such, although the proposal would not necessarily conflict with those broad sustainable growth principles, it would conflict with the detailed policies which control that growth. Such conflict is significant and substantial, and such growth, beyond that envisaged in and provided for by the plan could to my mind be construed as conflicting with the broad sustainable growth principles. I have not found that there is sufficient evidence before me in this appeal to lead me to conclude otherwise.
20. The proposal would not therefore deliver sustainable growth compatible with the development plan, and conflicts with Policies 1, 11 and 29 of the JCS, and Policy RS4 of the P2LP, which seek to ensure development is sustainable and appropriately distributed to meet the needs of the area. The proposal also conflicts with the guidance in the Framework on delivering a sufficient supply of homes within the ambit of a genuinely plan-led system.

Character and appearance

21. There is agreement between the parties, set out in the SOCG to the effect that the site is not located in a Framework-valued landscape and that other landscape and visual impacts would be localised, and have been accurately assessed in the detailed evidence on this point. I accept that agreement, however, detailed criticism of the likely effects of the proposal on the character and appearance of the area are, to my mind, distinct from landscape and visual effects.
22. Development of the site, even allowing for the proposed mix of housing, open space, allotments, parking, play space, open space and wildlife area, would lead to an obvious change to the rural character and appearance of the site, area, public right of way and setting of the village. Even the open spaces and wildlife areas would take on a significantly and fundamentally different character and appearance to the existing. Whilst such change is required in order to bring forwards development, and is not always harmful in itself, given the existing, established hard edge to the village and the open, rural character and appearance of the site and open countryside beyond, I find that the proposal would cause harm.
23. The appellant has highlighted the eastern projection of Hares Run to the north-east of the site. Whilst I acknowledge that the boundary of the appeal site is in line with the eastern projection of Hares Run, I do not find that this justifies unplanned residential expansion into otherwise open countryside.

24. Whilst it was put to me that the public right of way could be improved through works required by condition, its fundamentally rural character and appearance within the site would be lost. Insofar as the effect can be quantified at this stage, I consider that such a change would be harmful.
25. Turning to connectivity, I share the concerns of the Council. Notwithstanding any future layout of the site, it would only have a single road-link to the wider village and non-car means of access would be limited to the main access and the public right of way to the south. Although that does offer a second connection to the wider village, it is somewhat detached from the main built-up area. Whilst culs-de-sac are not unusual in the village, footways and pedestrian cut-throughs create effective and well-used links, the likes of which do not appear to be possible here.
26. With regard to the public realm, despite the lack of objection on technical, highway safety grounds, third parties in particular have raised concerns over the compatibility of the proposed access with users of The Centre At Mawsley (TCAM). Whilst the proposal would lead to an increase in parking spaces available for TCAM, it would also introduce an element of vehicular movement outside the TCAM entrance which does not currently occur.
27. It is clear from representations made to the appeal application, the appeal consultation and indeed, at the hearing, that this space, despite being a parking area, is used informally as public open space, for gathering and meeting. I was able to see this use on my site visits.
28. Taking all of that together, I find that the proposal would harm the character and appearance of the area, including the site itself, the public right of way, the setting of the village and the open countryside. The proposal therefore conflicts with Policy 8 of the JCS which sets place shaping principles for development in the area, including a requirement to respond to local topography, form, character and setting. The proposal would also therefore conflict with guidance in the Framework on achieving well-designed places.

Developer contributions

29. Policy 10 of the JCS requires that proposals will either make direct provision for or will contribute towards the provision of infrastructure required by the development. At the time of their decision on the application, no obligation under section 106 was before the Council.
30. At the hearing I was presented with an unsigned, draft agreement, which sought to secure contributions towards secondary education capacity, improving library services, improving the local surgery and community facilities. The agreement also sought to secure the provision of affordable housing on site, public open spaces and wildlife areas, allotments, car-parking for the community hall and additional outdoor play space for the Mawsley Day Nursery.
31. I have had regard to the evidence, the relevant guidance in the Framework and considered whether that agreement met the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. I am satisfied that the contributions would be necessary to make the development acceptable in planning terms, directly relate to the development and are fairly related in scale and kind to the development.

32. The parties disagreed on the ability of the appellant to ensure that a properly executed and enforceable agreement could be signed, but in light of assurances from the appellant, they were given time to finalise it to the satisfaction of the Council and submit it to me.
33. In advance³ of the originally agreed deadline for submission⁴, the appellant sought further time to complete a planning obligation. Having reviewed the title information, at this time the Council expressed further doubts over the ability of all landowners to be party to any obligation, or for them to be satisfied as to its effectiveness in advance of the final deadline⁵.
34. A unilateral undertaking has now been submitted, and on its face it appears to secure the contributions sought by the Council. However, I note and share the Council's additional detailed concerns⁶ over the effectiveness of that obligation, given the jurisdictional issues, particularly around powers of attorney and the number of parties (over two-hundred and fifty) involved.
35. As such, I find that I am not wholly convinced that the proposal could make suitable developer contributions, in accordance with Policies 10 and 30 of the JCS and relevant guidance in the Framework. This development plan conflict is significant.

Conclusion

36. The appellant invites me to consider, in the case that I find against their argument that the proposal complies with the development plan read as a whole, that the benefits of the proposal are substantial and would significantly outweigh any perceived harm, in compliance with the guidance set out in the Framework.
37. This test, essentially expressed in paragraph 11dii of the Framework is not engaged in this case. It is common ground between the parties that relevant development plan policies, or those most important for determining the application are not out-of-date, and there is no dispute that the Council has a five-year supply of housing land.
38. Despite that, s38(6) balance must be carried out and I must establish if material considerations indicate that a decision be taken other than in accordance with the development plan.
39. I accept, as established in the *Desborough* decision⁷ and discussed at the hearing, that the five-year housing-land supply figure is not a cap, and that exceeding it could be a positive outcome, particularly given the national context of a housing crisis, and given the overall emphasis in national policy on delivering a sufficient supply of homes.
40. I also note the concerns raised by the appellant around the housing trajectory, and the delivery of affordable housing in particular, but I do not consider that at this stage in the plan period, these concerns are sufficient to outweigh the fundamental conflict with detailed policies in the plan.

³ On 6 December 2022

⁴ Until Midday on 13 December 2022

⁵ Midday on 23 December 2022

⁶ Set out in their email of 16 December 2022

⁷ Appeal Ref: APP/L2820/W/20/3253498

41. Similarly, whilst I acknowledge there is a windfall allowance within the plan which makes up a sizeable portion of housing in the rural areas, Policy HOU1 of the P2LP makes clear that this is to be delivered within settlement boundaries.
42. The specific benefits which could accrue from the proposal over and above those that would accrue from other policy compliant development in Mawsley (set out in the SOCG) are of some weight. I also agree with the position in the SOCG that there is a significant need for affordable housing and its provision here would be a benefit of significant weight.
43. However, I have found significant and substantial conflict with the delivery of sustainable growth compatible with the development plan, with regard to the distribution of new homes and the control of development in the open countryside. I have also found that the proposal would conflict with development plan policies with respect to the character and appearance of the area.
44. The potential inability of the proposal to contribute towards the provision of infrastructure required by it, and to secure the site-specific benefits offered is also of significant weight. This matter may have been capable of resolution given sufficient time, and the appellant did seek such further time. However, as I have found against the proposal for other substantive reasons, which would not have been outweighed by the infrastructure and benefits to be secured through an obligation, I did not consider it necessary or reasonable, in terms of further expense for all parties, to do so.
45. Given the importance of the plan-led system, I find these conflicts taken together to be substantial and of great weight.
46. For the reasons given above I conclude that the proposal substantially therefore conflicts with the development plan. Whilst there are material considerations which weigh in favour of the proposal, I do not find that they are of such weight to outweigh the conflicts I have found, sufficient to indicate that a decision be taken other than in accordance with the development plan.
47. The appeal should therefore be dismissed.

S Dean

INSPECTOR

Appearances

FOR THE APPELLANT:

Robert Williams

Counsel, Cornerstone Barristers

Spencer Copping BA(Hons) DipTP MRTPI

WS Planning & Architecture

Emily Hall MRTPI

WS Planning & Architecture

Christopher Vaughan

Patrick Parsons

Nigel Jacobs

Intelligent Land

Robert Petrow

Petrow Harley Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Richard Marlow

Development Team Leader

INTERESTED PARTIES:

Cllr Jim Hakewill

Councillor for Rothwell Mawsley

Tom Sanders

Local resident

Michaela Martin

Local resident

Nicki Clode

Local resident

Pat Rowley

Local resident