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# Appeal Decision

Site Visit made on 17 May 2021

**by Graham Wraight BA(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 July 2021**

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## **Appeal Ref: APP/L2820/W/20/3265335**

### **Hawthorn Avenue (land off), Mawsley**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr A Lord (Clayson Country Homes Ltd) against the decision of Kettering Borough Council.
  - The application Ref KET/2020/0231, dated 17 March 2020, was refused by notice dated 25 September 2020.
  - The development proposed is the development of over 55s accommodation comprised of 29no. apartments, access, parking, communal facilities and associated works.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the development of over 55s accommodation comprised of 29no. apartments, access, parking, communal facilities and associated works at Hawthorn Avenue (land off), Mawsley in accordance with the terms of the application, Ref KET/2020/0231, dated 17 March 2020, subject to the conditions set out in the schedule at the end of this decision.

### **Procedural Matters**

2. On 1 April 2021 Kettering Borough Council merged with a number of other local planning authorities to form a new Unitary Authority, North Northamptonshire Council. However, the development plans for the merged local planning authorities will remain in place for the area within the new Unitary Authority they relate to, until such time as they are revoked or replaced. The development plan therefore remains as the North Northamptonshire Joint Core Strategy 2016 (CS) and the Saved Policies of the Local Plan for Kettering Borough 1995 (LP).
3. Both of the main parties have referred to the emerging Site Specific Part 2 Local Plan (eLP) which was submitted to the Secretary of State on 28 May 2020 and was examined later that year. Following examination, the Council has consulted on the proposed Main Modifications to the plan and on proposed changes to the Policy Map. The consultation responses and the Main Modifications have subsequently been sent to the Local Plan Inspector, whose final report is awaited. In light of the advanced stage that the eLP has reached, its relevant policies carry substantial weight.
4. The decision notice sets out three reasons for refusal. The Council advises that it no longer seeks to defend reason 1, which relates to the provision of a full affordable housing planning obligation, or reason 3, as a completed S106 planning obligation has been submitted during the appeal process. Based on the evidence before me I find no reason to take a different view to that of the

Council on these matters, and therefore I will determine the appeal solely based on the main issue arising from reason for refusal 2.

5. Mawsley has no defined settlement boundary and the Council advises that the proposal is therefore technically subject to development plan policies which restrict new development in the countryside. However, the appeal sits centrally within the village and within the confines of its built development. This matter was addressed in a 2011 appeal decision<sup>1</sup>, with the Inspector observing that the appeal site is clearly within the settlement and that it was common ground in principle that the site is suitable for some form of development. It remains common ground that the appeal site is suitable for development of some kind, albeit that this would technically fail to accord with some policies of the development plan.

### **Background and Main Issue**

6. Outline planning permission was granted in 1995 for a proposed new village comprising 750 dwellings, school, shop, public house, village hall, church and open space and ancillary roads, services and works. This development now forms the settlement of Mawsley. The Council advises that the composite masterplan for the approved settlement indicated that the appeal site was reserved as a 0.72 acre 'Pub Site'.
7. Subsequently, planning permission was granted in 2005 for the change of use of the appeal site from agricultural to commercial (public house). Planning permission was thereafter refused for 8 dwellings on the appeal site by the Council and dismissed in the aforementioned 2011 appeal.
8. The main issue in relation to this appeal is whether or not the loss of the site which is intended for use as a community facility would conflict with the development plan, and whether or not there would be harm to the social and economic functioning of Mawsley as a settlement.

### **Reasons**

9. Policy 7 of the CS requires that development should support and enhance community services and facilities, where appropriate. A number of criteria are listed in this policy, with the reason for refusal referring directly to a) and c).
10. Criterion a) is applicable to developments which give rise to the need for community services and facilities either on site or through an off-site contribution. It would therefore, for example, be a consideration on a proposal for a new housing development, such as that which has permitted the new settlement of Mawsley and would allow services and facilities that are deemed necessary to be secured as part of the proposal. However, there is no compulsion, either in the 1995 original outline planning permission or elsewhere, for a public house to be provided on the appeal site.
11. Criterion c) requires that existing facilities are safeguarded unless it can be demonstrated that they are not viable, no longer needed by the community they serve and are not needed for any other community use or that the facility is being relocated and improved to meet the needs of the new and existing community. However, in this case the public house is not in place and so strictly speaking there cannot be a requirement that it be safeguarded.

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<sup>1</sup> APP/L2820/A/10/2142675

12. On a reading of the requirements of parts a) and c), neither apply to the circumstances of the appeal case. Therefore, the proposed development does not conflict with Policy 7 of the CS when read in straightforward terms and against the criteria it sets out. However, it has been suggested that there is conflict with its premise of protecting community facilities and therefore I will go on to consider the evidence presented before reaching an overall conclusion on the main issue.
13. A period of ten years has passed since the previous appeal and Mawsley has grown since that time to its current size of around 950 dwellings. The site was marketed and available for a public house use between planning permission having been granted for such a use in 2005 and 2017, when it came into the ownership of the appellant. Evidence pertaining to this has been provided by the appellant in the form of written submissions from a local commercial agent. This represents a prolonged period during which the appeal site was available for public house use, and it includes times when the market was more buoyant than the time of the previous appeal.
14. There is an absence of marketing between 2017 and the current time. However, on the basis that a public house was not delivered in the 12 years prior to that, there appears to be little prospect that such marketing would have been successful. For this reason and, in the absence of any evidence to demonstrate that a public house is likely to come forward at any point in the future, it is not reasonable to expect the appeal site to remain vacant for an indefinite period of time.
15. There is only one road in and out of Mawsley, meaning that there is no passing through traffic. Due to this factor and because the settlement is geographically separate from others, unless the public house had an offer which would particularly draw people to it and would differ to the offers of other public houses, it would seem unlikely that it would be regularly frequented by people from outside of Mawsley. This lends weight to the assertion that a public house on the appeal site would rely primarily on patronage by Mawsley's residents, which places a limitation on its potential customer base.
16. The Centre at Mawsley (TCAM) is a community facility located immediately adjacent to the appeal site. It has similar opening hours to a public house and provides for the broadcast of sports and for functions. Whilst it does not have a significant food offer, it provides an alternative to residents who are seeking an offer that would be provided by a drink-led public house. It is probable that there would be a degree of competition between the two, which too would affect the potential customer base of a new public house.
17. The eLP proposes to allocate land to the west of Mawsley for housing development of up to 50 dwellings. This does not represent a significant increase in the size of the settlement in terms of either the number of dwellings or the additional population that is likely to result. There is nothing further in the information I have been provided to suggest that other housing sites are likely to come forward. Furthermore, the eLP policies map shows the appeal site as 'white land', without a specific allocation or designated use.
18. The Inspector in the 2011 appeal surmised that the absence of the provision of a public house from the section 106 agreement, or a requirement by condition to provide a public house within the outline planning permission for the village, supports the contention that if the village could not sustain a public house one

should not be built. Based on all I have before me, including the representations relating to the marketing and availability of the appeal site, the constraints on the potential customer base, the similar offer from the TCAM and the likelihood that the population of Mawsley will not grow substantially in coming years, I conclude that the village cannot sustain a new public house and that there is no evidence to suggest that it would be able to in the future. I also give substantial weight to the relevant policies of the emerging eLP, and to the fact that they do not seek to allocate or retain the site for any specific use.

19. The matters raised specifically with respect to the social and economic benefits associated with a public house relate to the potential benefits that could be achieved and not to how the settlement exists today, because Mawsley has grown to approximately 950 dwellings in size without the presence of a public house on the appeal site. At outline planning application stage it was not considered that the provision of a public house was of such paramount importance to the settlement that it should have been secured as part of the approved development package. In addition, even if a public house was constructed, there is no requirement that it must serve food and TCAM provides a drink-led establishment for residents. Therefore, I give only limited weight to the argument that the loss of the appeal site for a public house could be harmful to the social and economic functioning of Mawsley, or that it would deprive it of the chance of having a facility that is needed to make it significantly more so in those respects.
20. In conclusion, I have found there to be no conflict with the specific criteria set out in Policy 7 of the CS. Furthermore, even if there were to be a conflict with what could be perceived as an overarching aim to protect community facilities, I have outlined a number of material considerations which collectively demonstrate the difficulties of bringing this site forward for use as a public house in past years, that these difficulties would be likely to continue in the future, and that there is no compulsion either in previous planning decisions or in the eLP to retain this site for a community facility. I give only limited weight to the argument that the loss of the appeal site for a public house could be harmful to the social and economic functioning of the settlement. Overall, these material considerations would outweigh any conflict with Policy 7 and the concerns relating to the social and economic functioning of Mawsley. For the same reasons, there would be no conflict with the aims of paragraph 92 of The National Planning Policy Framework.

### **Other Matters**

21. The proposal would deliver 29 new residential units, which would be restricted to occupancy by persons of 55 years of age and older and members of their households. Whilst it is suggested that this would be an offer that is not currently present in the settlement and could allow existing residents to downsize but remain in Mawsley, there is no substantive evidence provided in this regard. Nonetheless, the proposal would offer a type of accommodation tailored to a particular demographic and would provide a more manageable accommodation option for older people. This carries moderate weight in its favour.
22. The appeal site is set apart from other residential development and the Mawsley Surgery by existing roads. There would also be a degree of visual separation from TCAM. Whilst development in the surrounding area is

predominantly two storey, there are examples of higher, three storey development integrated successfully amongst this. The overall design of the proposal, which includes drops in height to have two storey wings, together with the separation of the appeal site from other buildings, means that the proposal would assimilate well and not cause harm to the character and appearance of the area. The apartments are of an adequate internal size to meet the reasonable needs of their occupiers.

23. The design of the proposal and the physical separation would also ensure that there would not be harm to living conditions through a loss of outlook or light, overlooking or from the overall massing of the building. There would also not be harm to the TCAM, the surgery or the adjacent play area in these respects. Whilst concern is raised with respect to the impact upon the highway network, including the possible impeding of existing visibility splays and the number of parking spaces proposed, there is no objection from the Highway Authority. Based on the information that is before me, and my own observations during my site visit, I am satisfied that the proposal would not cause harm to highway safety. I also find no reason to take a different view to that taken by the Highway Authority that the car parking provision would be adequate for the development that is proposed. No substantive evidence has been provided to suggest that emissions generated by vehicles entering and leaving the site could cause harm to the users of the play area.
24. Bin storage would be communal and its locations are denoted on the plans submitted. There is nothing to demonstrate that this would not be appropriate to serve the needs of the proposed development. There are a number of trees and hedgerows located in and around the site. However, it has long been established that this is a site on which it is expected that development of some form can take place. Detailed landscaping can be controlled by way of a planning condition, and the plans submitted demonstrate that this could be undertaken in a manner that would be sensitive to the context and location of the appeal site.
25. There is an external area between TCAM and the appeal site which is used as an outdoor drinking area, and the use of this area would generate noise. However, it is separated from the proposed appeal building by the car park and there are other existing residential properties in similar proximity to it. Given these factors, the size of the outside area at the TCAM and the fact it would only be used when the weather was agreeable, any noise generated would not be of a magnitude to cause harm to the living conditions of the occupiers of the proposed apartments, or to jeopardise the continued use of the outdoor area at TCAM. There is also a play area adjacent to the appeal site, but this too enjoys physical separation from the proposal and furthermore its use is unlikely to generate high, or harmful, levels of noise.
26. There would be a technical conflict with Saved Policies 7 and RA5 of the LP and Policy 11 of the CS, as the appeal site lies within the open countryside as defined by the policies map. This is due to the policies map predating the settlement coming to be and the outline planning permission. Therefore in the circumstances that have subsequently transpired, the policy conflict is outweighed by the fact that there would be no harm to the open countryside, as the appeal site no longer lies in the countryside but in the middle of the settlement.

## **Conditions**

27. Conditions relating to the time period for carrying out the development and confirming the approved plans are necessary to provide certainty. The proposal is for over 55s housing to address a need for such development in Mawsley that has been identified by the appellant. This is the basis on which the proposal has been submitted and considered, and it is intrinsic to the assessment that has been made by statutory consultees on matters such as parking and education provision. It is therefore necessary to impose a condition to ensure that the scheme is delivered for occupation by over 55s and members of their households only, subject to provisions for dependents on the death of an occupier of the household that is over 55.
28. A construction management plan is needed to ensure that the impacts of the construction period are minimised. Measures to maximise water efficiency are required in accordance with Policy 9 of the CS. A Travel Plan is required to deliver the aims of Policy 8 of the CS. Conditions relating to external facing and roofing materials, the laying, coursing and pointing of stone walls, architectural details of all windows, doors, eaves, verge, rainwater goods, balconies and chimneys, boundary treatments and hard and soft landscaping matters are necessary to ensure that the proposal has an appropriate visual appearance.
29. Conditions relating to drainage and land contamination are required to ensure that these matters are adequately addressed. A Landscape and Ecological Management Plan is needed to provide certainty as to how such areas will be managed in the long term and in the interests of biodiversity. A condition relating to fire hydrants is required to ensure that the development provides for these. A condition requiring that the parking (and associated lighting bollards), access visibility splays, refuse, cycle, and mobility scooter stores be provided is necessary to ensure that these elements are delivered prior to the occupation of the development.

## **Planning Obligation**

30. The parties have completed a Section 106 Agreement which includes a number of obligations to come into effect if planning permission is granted. The obligations relate to the following matters.
31. Affordable Housing: The sum of £75,000 is provided for the off-site provision of affordable housing, this being a reduction on the full amount that would normally be required for the scale of development that is proposed. However, this reduction has been justified by a viability assessment, and having sought advice on future ground rent reforms, the Council accepts that the scheme would be unviable with a greater affordable housing contribution. On the basis of the evidence before me I have no reason to take a different view, and I conclude that this contribution meets with the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010.
32. Libraries Contribution: The sum of £3,965 is provided towards the enhancement of library facilities in the vicinity of the development, and the need for this has been evidenced by Northamptonshire County Council. This contribution therefore meets with the statutory tests.
33. Highways Contribution: This is a sum of £29,000 to Northamptonshire County Council, to be used to improve the bus service in Mawsley. This would directly



benefit residents of the proposed development, and the contribution meets with the statutory tests.

### **Planning Balance and Conclusion**

34. The criteria of Policy 7 of the CS are not applicable to the appeal proposal and therefore there is no conflict with this development plan policy.
35. However, even if there were to be a conflict with this policy, and this is combined with the concern regarding the impact that could arise on the social and economic functioning of the settlement to which I have afforded limited weight, these considerations would be outweighed by the other material considerations I have outlined, which collectively demonstrate that Mawsley cannot sustain a new public house at the current time, nor that it is likely to be able to do so in the future. Furthermore, there would be a moderate benefit from the provision of over 55s housing in Mawsley, which also weighs in favour of the proposal.
36. For these reasons, I conclude that the appeal, subject to conditions, should be allowed.

*Graham Wraight*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2463/12A, 018-118-001 Rev L, 018-118-002 Rev J, 018-118-003 Rev F, 018-118-004 Rev L, 018-118-300 Rev C, MAWS-001
- 3) Each unit of the development hereby permitted shall be occupied only by:
  - (i) persons of age 55 years or over;
  - (ii) persons living as part of a single household with such a person or persons;
  - (iii) persons who were living as part of a single household with such a person or persons who have since died.
- 4) Prior to the commencement of the development hereby permitted, a Construction Management Plan shall be submitted to and be approved in writing by the Local Planning Authority. The approved Construction Management Plan shall be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.
- 5) Before any above ground works commence full details of the surface water drainage scheme for the site, based on the approved Flood Risk Assessment and Drainage Strategy ref 18/30074 rev A dated 5th June 2020 prepared by David Smith Associates shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in

accordance with the approved details before the development is completed. The scheme shall include:

(i) Details (i.e., designs, diameters, invert and cover levels, gradients, dimensions and so on) of all elements of the proposed drainage system, to include pipes, inspection chambers, outfalls/inlets and attenuation structures and soakaways (if required).

(ii) Details of the drainage system are to be accompanied by full and appropriately cross-referenced supporting calculations which demonstrate no surcharging for the 1 in 1 year storm, no flooding for the 1 in 30-year storm and any flooding for the 1 in 100 year plus climate change storm event is within areas safe to flood.

(iii) Cross sections of control chambers and manufacturers hydraulic curves for the control device.

- 6) Before any above ground works commence a detailed scheme for the ownership and maintenance for every element of the surface water drainage system proposed on the site shall be submitted to and approved in writing by the Local Planning Authority and the maintenance plan shall be carried out in full thereafter. Details are required of which organisation or body will be the main maintaining body where the area is multifunctional (e.g., open space play areas containing SuDS) with evidence that the organisation/body has agreed to such adoption.

The scheme shall include, a maintenance schedule setting out which assets need to be maintained, at what intervals and what method is to be used. A site plan including access points, maintenance access easements and outfalls. Maintenance operational areas to be identified and shown on the plans, to ensure there is room to gain access to the asset, maintain it with appropriate plant and then handle any arisings generated from the site. Details of expected design life of all assets with a schedule of when replacement assets may be required.

- 7) No occupation of the development hereby permitted shall take place until a Verification Report for the installed surface water drainage system for the site based on the approved Flood Risk Assessment and Drainage Strategy ref 18/30074 rev A dated 5th June 2020 prepared by David Smith Associates, has been submitted in writing by a suitably qualified independent drainage engineer and approved by the Local Planning Authority. The details shall include:

- a) Any departure from the agreed design is keeping with the approved principles
- b) Any As-Built Drawings and accompanying photos
- c) Results of any Performance testing undertaken as a part of the application process (if required / necessary)
- d) Copies of any Statutory Approvals, such as Land Drainage Consent for Discharges etc.
- e) CCTV Confirmation that the system is free from defects, damage and foreign objects.



- 8) A landscape and ecological management plan (LEMP) and a scheme for biodiversity enhancement shall be submitted to, and be approved in writing by, the Local Planning Authority prior to commencement above slab level. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organization responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development shall be carried out in accordance with the approved details.

- 9) The development shall not progress above slab level until details of all external facing and roofing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
- 10) All external natural stone walls shown on the approved drawings shall be laid, coursed, and pointed in accordance with a sample panel which shall have been constructed on site and approved in writing by the Local Planning Authority prior to the commencement of construction of any such external walls. As approved, the sample panel shall be retained on site and kept available for re-inspection throughout the construction period.
- 11) The development shall not be occupied until a scheme for boundary treatment has been submitted to and approved in writing by the Local Planning Authority. The building to which the boundary treatment relates shall not be occupied until that part of the approved scheme has been implemented in accordance with the approved details.
- 12) The development shall not progress above slab level until full architectural details of all windows (and their surrounds), doors, eaves, verge, rainwater goods, balconies and chimneys have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

- 13) In the event that unexpected contamination is found at any time when carrying out the development hereby approved, it must be reported immediately to the Local Planning Authority. Development works at the site shall cease and an investigation and risk assessment undertaken to assess the nature and extent of the unexpected contamination. A written report of the findings shall be submitted to and approved by the Local Planning Authority, together with a scheme to remediate, if required, prior to further development on site taking place. Only once written approval from the Local Planning Authority has been given shall development works recommence.
- 14) No development shall take place above slab level until a scheme and timetable detailing the provision of fire hydrants, sprinkler systems and their associated infrastructure has been submitted to and approved in writing by the Local Planning Authority. The fire hydrants, sprinkler systems and associated infrastructure shall thereafter be provided in accordance with the approved scheme and timetable.
- 15) No development shall take place above slab level until a scheme of hard (full details of materials) and soft landscaping works which shall specify species, planting sizes, spacing and numbers of trees, hedgerows, and shrubs to be planted, the layout, contouring and surfacing of all open space areas has been submitted to and approved by the Local Planning Authority. The works approved shall be carried out in the first planting and seeding seasons following the occupation of any of the dwellings hereby approved unless these works are carried out earlier. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 16) Prior to first occupation of the development hereby permitted a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented prior to first occupation and remain thereafter.
- 17) All dwellings shall be constructed to achieve a maximum water use of no more than 105 litres per person per day in accordance with the optional standards 36(2)(b) of the Building Regulations 2010 (as amended) as detailed within the Building Regulations 2010 Approved Document G - Sanitation, hot water safety and water efficiency (2015 edition).
- 18) The parking (and associated lighting bollards), access visibility splays, refuse, cycle, and mobility scooter stores shown on the approved plans shall be provided and be available for use prior to first occupation of the development hereby permitted and shall remain in that form thereafter.

-----End of Conditions-----