



Appeal Decision

Site visit made on 13 August 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2024

Appeal Ref: APP/Q9495/W/24/3343398

Oak Vale, Minor Road From Stanger Cottages Towards Thornthwaite, Braithwaite CA12 5RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms S. Mawdsley & Mr M. Rankin against the decision of the Lake District National Park Authority.
 - The application reference is 7/2024/2001.
 - The development proposed is reconfiguration of 3 existing dwellings to provide 2no. new build local needs dwellings and retain 1no. dwelling within the existing building.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Ms S. Mawdsley & Mr M. Rankin against the Authority. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effects of the proposal on:
 - the character and appearance of the area; and
 - the living conditions of residents of Oak Vale and 5 Hopegill Gardens with regard to privacy, outlook and disturbance from vehicles.

Reasons

Character and Appearance

4. The appeal site is part of the rear garden of Oak Vale. This garden forms part of a larger swathe of garden land positioned between two strands of mainly linear, residential development that extend north from the centre of the village along two roads. This swathe of land, which comprises the long gardens of the properties along the lower road including Oak Vale, appears as a verdant and green buffer as it slopes upwards towards the buildings on the upper road, Howe Lane. The gardens and the mature vegetation within them provide a pleasant backdrop to the properties on the lower road and contribute to a sense of spaciousness in the built form.
5. The proposed dwellings would be located fairly centrally within the site. They would sit lower on the sloping area of garden land than the dwellings at 3 and 4 Hopegill Gardens which are part of a development of five houses granted

planning permission by the Authority in 2021¹ on garden land adjacent to the site. As such, there would be a greater separation between the proposed dwellings and Howe Lane compared to those on Hopegill Gardens, and a clear visual gap between the development along the lower and upper roads would be maintained. Although the proposed dwellings would present as two and a half storeys from the front due to the sloping topography, they would be slightly lower in height than the dwelling at 3 Hopegill Gardens which sits at the head of that cul de sac at its highest point and would have a smaller overall massing.

6. From the A66 on the approach to the village, the proposed dwellings would be viewed as sitting behind the dwelling at Holly Tree House and visually associated with the development on Hopegill Gardens. They would appear as somewhat contained by these dwellings and the small building located to the rear of the grounds of the Ruddings Hotel just to the north of the site. There would be a similar context for views from the east including the lane adjacent to the Braithwaite Institute and the playing fields. Given these particular circumstances, the proposed dwellings would be accommodated within the site without markedly diminishing the spacious green character of the area, even allowing for the massing of the buildings.
7. The proposed dwellings would be seen as sitting behind Oak Vale when viewed from the junction of the lower road with the A66. This backland position would not be typical of the development pattern along the more northerly part of the lower road where properties generally have a presence along its frontage. However, the set back position of Holly Tree House would be a mitigating factor in such views and the location of the proposed dwellings would not therefore appear unduly discordant. Additionally, the proposal would not be dissimilar to the pattern of development established by Hopegill Gardens.
8. Both parties have drawn attention to an appeal decision from 2013², extracts of which have been provided in evidence. However, in that case, the proposed dwelling was located to the rear of the site at its highest point and with access taken from Howe Lane. It is not therefore directly comparable to this appeal proposal. Furthermore, for the reasons given, in my judgement the proposal would maintain the characteristics which the previous Inspector considered to be locally distinctive, namely the undeveloped slopes of rear gardens forming a separation between the development above and below and the country character of Howe Lane. Reference is also made to a 1989 application for three houses³ that was refused on the adjacent site at Thelmllea. However, since that time, the five dwellings on Hopegill Gardens have been developed at this location.
9. I therefore conclude that the proposal would not harm the character and appearance of the area. Accordingly, there would be no conflict with Policies 01, 02, 05 and 06 of the 2021 adopted Lake District National Park Local Plan 2020-2035 (the Local Plan). In summary, and amongst other matters, these policies seek to ensure that the extraordinary harmony and beauty of the National Park's landscape and its special qualities are conserved and enhanced; that development is appropriate to the character of its location; and that it protects, maintains, or enhances local distinctiveness. There would also be no

¹ Application reference 7/2020/2301

² Appeal reference Q9495/A13/2206772

³ Application reference 7/89/2285

conflict with the Framework objectives for National Parks and achieving well designed places.

Living Conditions

10. I have not been referred to any quantitative standards for separation distances in the Local Plan. However, Policy 06 states that development must not have an unacceptable impact on the amenity of adjoining residents due to an overbearing effect amongst other considerations.
11. The site is adjacent to the rear gardens of 4 and 5 Hopehill Gardens, although the southerly most proposed dwelling would be closest to no. 5. From the submitted evidence and what I observed at my site visit, at least some of the windows in the rear elevation of no. 5 at ground and first floor serve habitable rooms. Outlook from these rear windows and rear garden would be towards the side wall of the nearest proposed dwelling, which would run for a large section of the length of the shared boundary. From the submitted evidence and my site visit observations, I am aware that the rear garden of no. 5 is shallow and along with the dwelling, sits at a notably lower level than the site.
12. I appreciate that the separation distance that would be achieved may be acceptable in certain cases and may be similar to that between the houses on Hopehill Gardens and neighbouring properties. However, there are site specific circumstances here that arise particularly from the shallow garden of no. 5, the elevated height of the nearest proposed dwelling due to the differing land levels, and the length of the built development which would be close to the common boundary. These would combine to create an overbearing effect for residents of no. 5 especially when in their garden. The proposal would therefore result in an unsatisfactory outlook for residents of no. 5 and hence would have an unacceptable impact on their living conditions.
13. Given the positioning of the windows and the screening effect of the proposed two metre boundary fence, there would be no unacceptable loss of privacy for residents of no. 5.
14. The part of the site nearest to no. 5 is currently an area of lawned garden. There would be a change to the nature of activities experienced by residents of this dwelling arising from vehicle movements compared to a garden use, in particular the parking and turning area of the nearest proposed dwelling. However, the proposed two metre close boarded fence between the site and the rear of no. 5 together with the likely limited vehicle movements would adequately mitigate any disturbance caused.
15. In terms of Oak Vale, vehicles to and from the proposed dwellings would pass relatively close to the side elevation of the dwelling that would remain. However, the likely low number of vehicle movements, the separation distance from the habitable space of Oak Vale, and the boundary treatment that could be secured through a planning condition would ensure that the proposed access would not compromise the living conditions that residents could reasonably expect to enjoy.
16. The proposed dwellings would be oriented towards the rear elevation of Oak Vale. The appellants identify that the separation distance would be around 36 metres. Even allowing for the two and a half storey height of the proposed dwellings at the front and that they would be sited at a higher level, I am

satisfied that the separation distance would be sufficient to prevent a harmful level of overlooking or perceived overlooking for residents of Oak Vale.

17. Pulling these points on living conditions together, I find that the proposal would not harm the living conditions of residents of Oak Vale or 5 Hopegill Gardens with regard to disturbance from vehicles nor would it harm the living conditions of residents of Oak Vale with regard to privacy. However, I have found harm in relation to the living conditions of residents of 5 Hopegill Gardens with regard to outlook. The proposal would therefore conflict with the residential amenity requirements of Policy 06 of the Local Plan and the Framework.

Other Considerations

18. The site lies within the catchment of the River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC). The SAC is identified by Natural England as requiring nutrient neutrality strategic solutions. The wastewater from additional new housing development has the potential to increase nutrient loads. The Conservation of Habitats and Species Regulations 2017 require the competent authority to undertake an Appropriate Assessment where there are likely significant effects from a proposal, either alone or in combination with other plans or projects. If I were minded to allow the appeal, as the competent authority I would need to consider whether there would be a likely significant effect on the qualifying features of the SAC from the proposal arising from the release of nutrients into its catchment. However, given my overall findings on this appeal, it is not necessary for me to reach a view on this matter.
19. The proposal would contribute two local occupancy dwellings to the supply of housing in a location that is supported in principle by the spatial strategy in the Local Plan. There would also be social and economic benefits such as construction employment and additional residents supporting local services and facilities. However, I do not afford such benefits very significant weight in the context of the quantum of dwellings proposed. They would not outweigh the harm that I have found.

Conclusion

20. The proposal would be acceptable in terms of its effect on the character and appearance of the area and in respect of the living conditions of residents of Oak Vale. However, I have found that there would be harm to the living conditions of residents of 5 Hopegill Gardens with regard to outlook. This is a matter of overriding concern and to this extent there would be conflict with the development plan when considered as a whole. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR