Planning Inspectorate

Appeal Decision

Site visit made on 19 March 2025

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th April 2025

Appeal Ref: APP/U1430/W/24/3356438
Oakleigh, 6 Woodland Way, Crowhurst, East Sussex TN33 9AP

- 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 Mr K Eason against the decision of Rother District Council.
- The application Ref is RR/2024/1029/P.
- The development proposed is a detached dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are a) whether the site is a suitable location having regard to the strategic gap and the character and appearance of the area; and b) whether there is sufficient information on biodiversity and protected species.

Reasons

Location

3. The appeal site is located outside of but adjacent to the existing settlement boundary of Crowhurst. It is also located within a strategic gap around Battle, Hastings and Crowhurst.

4. Development outside of a settlement boundary would be contrary to policy. However, given the current lack of housing provision in the area, this policy presumption against development is considered by the Council to be out of date in the context of this appeal. Nevertheless, there remains a policy-based objection to the site being located within a strategic gap.

5. The strategic gap is set out in Policy DEN3 of the Development and Site Allocation Local Plan 2019 (DaSA). While the policy does not place a moratorium on development within the strategic gap, it does seek to control it. This is to ensure that the coalescence of settlements is prevented and thus both the strategic settlement pattern is maintained, and settlements retain their separate identity and distinctiveness.

6. In tandem with this, Policy EN3 of the Local Plan Core Strategy (LPCS) requires new development to be of a high design quality so that it, amongst other things, contributes positively to the character of the site and surroundings.

7. The appeal site would comprise a portion of land to the rear of Oakleigh with an access drive immediately to the south of the host dwelling. The site's location, size

and shape mean that it does not display the expansive openness of the surrounding agrarian landscape. However, as an undeveloped and verdant site, it possesses positive qualities which echo and harmonise with the wider area. It therefore has value and makes a contribution to the strategic gap.

8. The proposed building itself would comprise a single storey dwelling positioned at a lower level than Oakleigh and well to the rear of it. The existing dwelling, the garage/annexe and the approved new bungalow are seemingly within the settlement boundary. In contrast, the proposed dwelling would clearly extend the ribbon of built form along a similar alignment as Woodlands Way but further south and into the strategic gap.

9. The new dwelling is described variously as unobtrusive, not prominent and subservient to Oakleigh and the surroundings. Where the dwelling could be seen, particularly from the nearby 1066 Country Walk, it would be against rising land. However, none of these matters in themselves demonstrate a high design quality.

10. Good design involves taking account of the pattern and scale of the surrounding context and built form. There is little in the design and appearance of the proposed dwelling to suggest that has happened in this case. There does not appear to be any particular design rationale for how the building's design has evolved, or which explains the choice of external materials, beyond seeking to minimise its appearance.

11. The simple block form, vertical cedar cladding and zinc roof would not result in a dwelling of high design quality nor one which would reflect or complement the housing nearby. Similarly, these factors would not satisfactorily limit or lessen the building's prominence within the site or its incongruity within the landscape.

12. I note the appellant's references to the site being within the curtilage of Oakleigh and permitted development rights existing for an outbuilding. On this basis it is suggested that an outbuilding similar in size to the proposed dwelling would have similar impacts. The Council questions whether the appeal site is within the curtilage of Oakleigh. From what I saw on my site visit; from the aerial photographs provided by the Council; and given that it is within the strategic gap, I cannot be certain of the appellant's claims regarding the curtilage, but I make no formal determination. This would be a matter for a separate Certificate of Lawfulness to consider.

13. Regardless of whether the site does form part of Oakleigh's curtilage, what does appear clear, particularly in light of the recently refused certificate, is that the fallback position for a similarly sized outbuilding was only a theoretical possibility. The application for the Certificate was intended to support the subsequent application for a new dwelling rather than to be a development in its own right.

14. Furthermore, an outbuilding or the site's use as a garden would appear and function differently from a new dwelling. The proposal before me would very clearly be read as a separate unit, with a separate curtilage, access, car parking, activity and overall intensification in the use of the land. The introduction of such a development into this space would have a far greater impact and incursion into the strategic gap than an outbuilding or its use as part of Oakleigh's garden.

15. Overall, and notwithstanding that it is for a single dwelling, the proposed development would cause the piecemeal erosion of the defined Strategic Gap as

well as undermining the intent of the policies within the development plan which seek to expressly protect these areas and ensure that development contributes positively to the character of the site and surroundings. I therefore find that the site is not a suitable location for the proposal and for the reasons stated would conflict with Policy DEN3 of the DaSA and Policy EN3 of the LPCS.

Biodiversity and Protected Species

16. The appellant indicates that the proposed dwelling would be a self-build/custom dwelling and therefore exempt from the requirements of Biodiversity Net Gain (BNG). However, there is no mechanism (such as a legal agreement) submitted with the appeal which would ensure the development was limited in this way. Therefore, I have no certainty that the dwelling as constructed would comply with the relevant legislation and self-build definition. On that basis, the scheme would not be exempt from BNG and the lack of information in relation to it weighs against the proposal.

17. The site would also be within an amber zone for Great Crested Newts. The ecological report submitted in support of the appeal was undertaken by a suitably qualified person, but it was completed nearly two and a half years ago. I acknowledge that some of the report's assessments and findings may still be relevant. Nevertheless, up-to-date information on the presence or otherwise of protected species and the extent to which they may be affected by the proposed development needs to be established before the development could be permitted to proceed.

18. Given the lack of up-to-date evidence, and taking a precautionary approach, I am unable to reach a finding of no harm to the protected species. Given the need to establish this before a development is permitted it is not therefore something which can be addressed through a condition.

19. As a result, in the absence of sufficient information, the proposed development does not comply with Policy EN5 of the LPCS and Policy DEN4 of the DaSA, which require that developments, amongst other things, protect and enhance biodiversity and conserve and enhance protected species in order to support and contribute to the conservation, enhancement and management of the natural and local environment.

Other Matters

20. I note the appellant's observations that a previous application on the site did not attract an objection on BNG grounds. However, this only became a requirement for all developments on 2 April 2024 and so post-dates those previous applications.

21. The Council's approach as to whether the site is within the curtilage of Oakleigh may have changed since the determination of the previous Certificate of Lawfulness. If it has, this would be a matter for the Council to clarify. However, it does not have a direct bearing on my decision.

Planning Balance

22. There is no dispute between the main parties that the Council is unable to demonstrate a five-year housing land supply. The appellant indicates the level to be some 2.63 years. Accordingly, Paragraph 11 of the Framework is engaged.

23. The proposed dwelling would make a contribution towards local housing supply and this would be a benefit of the scheme. There would also be some economic benefits including those created during construction and subsequently upon occupation of the dwelling. While the proposal is only for a single dwelling, given the scale of deficit in housing supply, I attribute considerable weight to these benefits.

24. Conversely, I have found that the proposal would cause harm to the strategic gap and to the character and appearance of the area. The proposal also fails to make suitable provision for BNG and protected species. These would be long lasting harms and the need to avoid them is perennial and in direct compliance with the Framework. This all weighs significantly against the proposed development.

25. Therefore, in the final balance, the harm caused is such that the impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations and securing well-designed places.

Conclusion

26. I conclude that the proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR