



Appeal Decision

Site visit made on 25 April 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/P1133/W/22/3303189

Land adjacent to Rock Cottage, Cofton Hill, Cockwood, Devon EX6 8SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Mark Tothill against Teignbridge District Council.
 - The application Ref: 22/00217/FUL, is dated 3 February 2022.
 - The development proposed is the construction of two dwellings plus associated creation of vehicular access and landscaping (phased development).
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Decision

1. The appeal is dismissed.

Main Issues

2. The Appellant has submitted this appeal on the basis of non-determination of the planning application. Following the submission of the appeal against non-determination, Teignbridge District Council (the Council) has identified the reasons the local planning authority would have given to refuse consent. The Appellant has seen these details and has had the opportunity to respond.
3. In light of the submissions, the main issues in this appeal are:
 - Whether the location of the proposed development would accord with local policies that seek to restrict development in the countryside,
 - The effect of the proposed development on the character and appearance of the surrounding area, including the setting of the adjacent Cockwood Conservation Area (the Conservation Area) and its effect on the setting of Rock Cottage, a Grade II Listed Building; and,
 - The effect of the proposed development on highway safety.

Reasons

Location of Development

4. The appeal site comprises land located adjacent to, and forming part of the external amenity area associated with, Rock Cottage. The appeal site adjoins, but is outside of, the settlement limit of Cockwood as defined within the Teignbridge Local Plan 2013-2033 (the Local Plan).
5. Policy S22 of the Local Plan confirms that land situated outside of the defined settlement limits is classified as being open countryside. This policy provides that within the open countryside, development is to be strictly managed and

limited to proposals for, amongst other things; rural workers dwellings, agricultural buildings, leisure and tourist uses, affordable housing and alterations and extensions to existing dwellings.

6. In this instance, the appeal scheme does not propose any of the forms of development that Policy S22 of the Local Plan provides support for. However, the Appellant considers that the site is suitable for inclusion within the settlement, and maintains that the Council failed to properly consider the inclusion of the site within the settlement boundary at Cockwood in respect of an emerging development plan. In that respect I have been referred to the emerging draft Teignbridge Local Plan 2020 -2040, which the evidence before me indicates is at the Regulation 19 stage.
7. Whilst I note the Appellant's submissions regarding the inclusion of the appeal site within the settlement boundary, it appears that the Council considered that position as part of both a Draft Settlement Boundary Review conducted in 2018 and as part of the Teignbridge Local Plan Review 2020-2040. In those regards, whilst it was considered that the settlement had some capacity for additional housing, given the site's location adjacent to designated heritage assets, its proximity to Protected Habitat sites and the constrained nature of surrounding highways, the Council concluded that the site was unsuitable for inclusion within the settlement boundary.
8. The appeal site is outside of the settlement limit, and does not propose a form of development at such a location that is supported by the spatial strategy policy of the development plan. Accordingly, there would be conflict with Policy S22 of the Local Plan. I shall return to consider the weight to be attached to that conflict with Policy S22 of the Local Plan, below in the planning balance.

Character and Appearance and Heritage Assets

9. As noted above, the development plan places the site within the open countryside. The evidence before me confirms that the site is also located within an Area of Great Landscape Value (the AGLV). The site is in an elevated position, bounded by hedges and predominately slopes downhill from west to east.
10. In terms of the effect of the appeal scheme on the surrounding landscape, Policy S2 of the Local Plan provides that development should be of a high quality design which integrates with the surrounding natural environment, and which respects the distinctive character of the local landscape. Policy EN2A of the Local Plan specifically concerns landscape protection and enhancement and, amongst other matters, requires that development be sympathetic to and help conserve and enhance the natural and cultural landscape of Teignbridge and in particular in the AGLV.
11. The appeal scheme is for two split level detached dwellings with associated garages and vehicular access onto Cofton Hill. The proposed dwellings would be of contemporary design with pitched roofs, areas of green flat roof and which would exhibit large glazed openings and glass balustrades. The dwellings would be constructed in a variety of materials to include Devon pink rubble stone walling and grey timber boarding, with one of the proposed units also including elements of off white render. Whilst I note that considerable effort has been put into the design of the proposed dwellings to include some use of local

materials, in my view the proposed residential units which include significant areas of glazing, would appear modern in design.

12. Nonetheless, the appeal site is surrounded by development; residential development to include gardens of domestic appearance and a school. Whilst I acknowledged the Council's submissions, the site appears as garden land surrounded by development and which, in my view, does not contribute to the rural landscape qualities of the countryside at this location. The proposal would be seen in the context of surrounding development. Consequently, I find no harm in terms of the effect of the proposal on the wider landscape or AGLV. In respect of the effect on the surrounding landscape, I therefore find no conflict with the aims or provisions of Policies S2 or EN2A of the Local Plan.
13. Notwithstanding the above, it has been put to me by the Council that the appeal scheme would fail to preserve or enhance the setting of the Conservation Area and would have an adverse effect on the setting of the listed building at Rock Cottage. Further to other matters described above, Policy S2 of the Local Plan requires that development integrate with and, where possible, enhance the character of the adjoining built environment and particularly affected heritage assets. Policy EN5 of the Local Plan specifically concerns heritage assets and requires that development takes account of the significance, character, setting and local distinctiveness of any affected heritage asset.
14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
15. Rock Cottage is an impressive and attractive, detached Grade II listed building set within generous grounds, and which exhibits architectural features of merit. The Historic England listing description provides that Rock Cottage comprises two parallel ranges dating from the early and mid nineteenth century, exhibiting sash windows and bay window over two floors, with scalloped bargeboards, and which is located at an important quayside position.
16. Rock Cottage, and part of its associated external amenity area, is located within the Conservation Area. However, the appeal site itself falls outside of and immediately adjoins the Conservation Area. From observations made on my visit, the significance and positive character features of the Conservation Area is predominantly derived from the architectural quality of traditional buildings arranged around narrow lanes, its setting against a backdrop of open countryside and its position overlooking a modestly sized tidal harbour area.
17. The site is not highly visible from within the wider surrounding area. However, it can be seen from buildings, and views from within its immediate surroundings at Cockwood. The proposed dwellings would be cut into the sloping land. Whilst substantial parts of the respective proposed dwellings would not be prominent in views from within the wider surrounding area, the modern built form of the dwellings would also be seen in glimpsed views from the harbour area and from the causeway that connects Cockwood to the

adjacent settlement at Starcross. The appeal site makes a positive, albeit limited, contribution to the setting of Rock House which itself makes an outstanding and significant positive contribution to the character and appearance of the Conservation Area.

18. I acknowledge that there are examples of modern development near to the site. However, from views close to the site, including from parts of Rock Cottage itself and from within the Conservation Area, the modern design of the proposed dwellings and inclusion of substantial areas of glazing and glass balustrades, would sharply contrast with the character and appearance of Rock Cottage, drawing the eye away from and being harmful to the significance of that heritage asset which makes an outstanding contribution to the character and appearance of the Conservation Area. In that respect, the appeal scheme would not integrate with the historic environment nor would preserve the historic value and significance of Rock Cottage.
19. In terms of the advice in the National Planning Policy Framework (the Framework) the harm to the significance of the identified heritage assets would be 'less than substantial', affecting only its immediate surroundings. Whilst the harm would be limited, a finding of 'less than substantial harm' does not equate to less than a substantial objection. The Framework makes clear that any harm to the significance of a designated heritage asset should require clear and convincing justification. Accordingly, and in line with the provisions of paragraph 202 of the Framework, this harm should be weighed against the public benefits of the scheme including, where appropriate, securing its optimum viable use.
20. In this instance, the public benefits of the appeal scheme would be limited to the delivery of two additional housing units in a location with convenient access to services and facilities, and in relation to the very limited economic benefits in terms of employment opportunities during the construction phase and through the future spend of residents within local businesses. Cumulatively, I attach only moderate weight to the benefits of the scheme by reason of the scale of development. In that regard I find that the modest benefits would not outweigh the identified harm that would be caused to the above identified designated heritage assets to which, in accordance with the provisions of the Framework, I attach great weight.
21. For the above reasons, the appeal proposal would conflict with the provisions of Policies S2 and EN5 of the Local Plan in respect of heritage assets and would fail to accord with those parts of the Framework which concern conserving and enhancing the historic environment.

Highway Safety

22. Policy S1 of the Local Plan provides that development will be required to perform well against a number of criteria which, amongst other matters, includes road safety and congestion.
23. Vehicles entering into, and emerging from, the appeal site would make use of an existing point of access onto Cofton Hill. In that respect, the proposed development would be likely to result in a significant increase in use of that point of access. At this location, Cofton Hill is narrow and without parking restrictions in place. As I observed on my visit, parking on Cofton Hill close to

the proposed point of vehicular access to the appeal scheme, would severely restrict visibility for vehicles emerging from the appeal site.

24. Whilst it is noted that there was no specific objection from the Highways Authority, I recognise that the Highways Authority referred the Council to its standing advice contained within the County Council's 'Highways Development Management Advice For The Determination Of Planning Applications' (the HDMA). In terms of visibility, the Appellant has referred me to the Manual for Streets guidance (the MFS).
25. With regards to visibility, both the HDMA and the MFS provide that the distance back from the carriageway edge from where a visibility splay is measured (the X distance), should normally be 2.4 metres in most built-up situations, as this represents a reasonable maximum distance between the front of the car and the driver's eye. The advice and guidance go on to say that a minimum figure of 2 metres may be considered in some very lightly-trafficked and slow-speed situations but that using this value will mean that the front of some vehicles may protrude slightly into the adjoining carriageway.
26. In support of the proposal, the Appellant has provided details of visibility splays at the proposed vehicular point of access, and which indicates that visibility of 11 metres in both directions along Cofton Hill is achievable. However, that level of visibility in both directions is not achieved if the X distance is taken from the carriageway edge. In that respect, the Appellant has used an imaginary give way line on the carriageway, and which it has been put to me represents a line taken from the outer side of parked cars that "*often park along the Cofton Hill*". Both the MFS and the HDMA provide that the X distance can be taken from an imaginary give way line, where no formal markings are in place.
27. However, whilst there are no formal markings in place at the carriageway edge, I do not find that the guidance supports the use of imaginary give way lines by reason of parked cars. Nonetheless, even in the event it was appropriate to use the imaginary give way line in such circumstances, the details provided by the Appellant show that visibility splays of 11 metres in both directions could not be achieved if there were parked cars within 11 metres of the proposed point of access. As noted above, there are no parking restrictions on that part of Cofton Hill and, as such, the often-parked cars on that carriageway would consequently obstruct visibility.
28. Notwithstanding the above, within their final comments in this appeal, the Appellant has provided a further amended plan which shows visibility splays taken from a point 2.4 metres back from the carriageway edge. The amended plan shows that to achieve the required visibility splay of 11 metres in both directions, a short section of hedge would be moved back further into the appeal site. However, even in the event that I could accept the amended details with reference to the principles laid out in the case of *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37], the amended plan also shows that a visibility splay of 11 metres to the north, could not be achieved if there were parked cars close to the proposed point of access.
29. For the above reasons, the appeal proposal would result in a substantial increase in the use of the existing access to the site and I conclude that vehicles emerging from the site would have insufficient visibility. As such, and given the narrow nature of the highway, the lack of pedestrian footways and proximity to the school, there would be, in my view, much opportunity for

conflict between vehicles, and between vehicles and pedestrians when using the proposed access. Consequently, the appeal scheme would conflict with the provisions of Policy S1 of the Local Plan with regards to road safety.

Planning Balance

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
31. The Council's spatial strategy places the appeal site outside of the settlement boundary. However, the site would not be physically detached from adjoining and surrounding development, nor would extend the built form of Cockwood into the undeveloped countryside. In that respect, while the proposal would conflict with Policy S22 of the Local Plan, I find no harm arises from that very limited conflict. Nonetheless, the proposal would result in harm to identified designated heritage assets and would have an adverse impact on highway safety. In those respects, the resulting conflict with the policies of the development plan weighs significantly against the appeal scheme.
32. Against that harm, the appeal proposal would result in the provision of additional housing, one of which would be self-build, adding to local housing stock with the resulting social benefits. I also acknowledge that the proposal would generate economic benefits through short term employment opportunities and would help to support local facilities and services in Cockwood, Starcross and beyond. However, given the scale of the development, these benefits would be modest. Overall, whilst acknowledging that the proposed development would comply with certain policies of the Local Plan, the benefits of the appeal scheme would not outweigh the harm identified above and would fail to accord with the development plan when taken as a whole. There are no other material considerations which indicate that a decision should be made other than in accordance with the development plan.

Other Matters

33. Interested parties raise additional objections to the proposal on the grounds of ecology, adverse effects on the living conditions of nearby residents, increased risk of flooding, and archaeology. These are important matters and I have considered all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my overall decision.
34. The appeal site is located within the zone of influence of the Exe Estuary Special Protection Area and the Dawlish Warren Special Area of Conservation. However, given my overall conclusion on the main issues as above, it has not been necessary for me to consider this matter any further in this instance.

Conclusion

35. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR