



Appeal Decision

Hearing held on 17 October 2024

Site visit made on 16 October 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/P1133/W/24/3348030

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 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mark Tothill against the decision of Teignbridge District Council.
 - The application Ref is 24/00189/FUL.
 - The development proposed is Construction of two dwellings plus associated creation of vehicular access and landscaping (phased development).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the submission of the appeal and additional information provided by the appellant, the main parties have agreed that reasons 2 and 3 on the decision notice have now been addressed and are not in contention. I consider this under 'Other Matters'.
3. The parties have been able to comment on the Secretary of State's Written Ministerial Statement 'Building the homes we need' (July 2024) and the Government's consultation on proposed planning system changes, including reforms to the National Planning Policy Framework ('the Framework') (2023).

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area, with particular regard to the preservation of the setting of Rock Cottage as a Grade II listed building, and the preservation or enhancement of the Cockwood Conservation Area; and
 - Whether the Council can demonstrate a deliverable housing land supply as required by the Framework.

Reasons

5. The appeal site is designated as open countryside, and an Area of Great Landscape Value (AGLV) in the Teignbridge Local Plan 2013-2033 (LP). It is in an elevated position and comprises the upper part of the garden of Rock Cottage, a Grade II listed building. Two dwellings are proposed, one accessed via an existing access point from Cofton Hill, and one from a new access off School Hill.

6. A previous appeal for 2 dwellings was dismissed in 2023¹. That identified very limited conflict with the LP Policy S22, due to being located outside of the settlement limit and a development type unsupported by the spatial strategy. However, the Inspector found that no harm would arise, as the site would not be physically detached from surrounding development, nor extend the Cockwood built form into the undeveloped countryside. The Council therefore did not cite conflict with Policy S22 as a reason for refusal for the current appeal, and I see no reason to find differently.
7. The appeal site's northern and eastern boundary runs alongside the Cockwood Conservation Area (CA) boundary. The significance of this small CA is predominantly derived from the architectural quality of the traditional buildings arranged around narrow lanes, as the historic heart of the village and including the tidal harbour, alongside bigger houses in large gardens on the village outskirts. There are also several listed buildings within the CA. I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of listed buildings.
8. Paragraph 205 of the Framework requires that great weight should be given to the conservation of designated heritage assets. The LP Policy EN5 broadly aligns with this approach, in that development proposals should take account of the significance, character, setting, and local distinctiveness of any affected heritage asset. Development should respect and draw inspiration from the local historic environment, and respond positively to the character and distinctiveness of the area.
9. The significance of Rock Cottage arises from its architectural features, and important quayside position at the historic heart of the CA. It comprises two parallel ranges dating from the late C18/early C19 and the mid/late C19, with sash windows and bay window over two floors, and scalloped bargeboards. It is an impressive and attractive detached dwelling within generous grounds. The lower formal garden provides a tangible appreciation of its use as a gentleman's residence, with the property allowing for an understanding of the development of Cockwood. Rock Cottage thus makes an outstanding and significant positive contribution to the character and appearance of the CA.
10. The main parties agree that there are no other heritage assets with the potential to be affected, and based on their separation distances, I see no reason to take an alternate view.
11. The appellant suggests the appeal site to have a neutral contribution to the overall significance of Rock Cottage, for several reasons. Originally it was within a separate agricultural plot and ownership than the lower formal part of the garden. Although degrees of association with the dwelling have varied over time, they consider there is no evidence that it ever formed part of the formal garden. It can only be seen from a dormer window within Rock Cottage, and does not play a major feature as a backdrop to the house. As such, the site does not allow for an understanding of the nature of the dwelling, with no strong historic or visual link. The site was also not included within the CA boundary.

¹ APP/P1133/W/22/3303189: Appeal against the non-determination of application 22/00217/FUL, for the construction of two dwellings plus associated creation of vehicular access and landscaping (phased development). Appeal dismissed May 2023.

12. However, the 1890 mapping does show a formal path that the Rock Cottage residents would have used to cross the appeal site, with the wrought iron pedestrian gate onto Cofton Hill still present. The boundary walls, hedges, and gateways that remain today are identified as likely being contemporary to the 1890 construction of the south range. There is photo evidence from around that period showing that the slope leading up to it was landscaped as part of the formal garden, and the 1913 deeds identify that it was a garden. Overall, I find that the appeal site is still readily interpreted as being associated with Rock Cottage, and has a positive, albeit limited, contribution to its setting. This is the same finding as that of the previous Inspector.
13. Viewed from the river and across the estuary, the village is seen as a dense grouping of traditional houses gently rising up the small hill. Only the boundary vegetation of the appeal site is visible from within such viewpoints, forming a strong verdant contribution. However, the site is more evident within its immediate surroundings. My site visit identified that despite the thick hedgerows, a sense of open space could be appreciated at some points through these and the pedestrian gate. This is especially apparent coming downhill on Cofton Hill, with clear views of the estuary above the fenced vehicle access. The site is also visible to a much greater extent from within the school, and from the neighbouring front gardens and dwellings sited above.
14. From School Hill, the existing boundary hedgerow and banking is an attractive and highly positive contribution to the character of the area. I find overall that the appeal site has a moderate contribution to the setting of the CA, predominantly due to its boundary vegetation, and its contribution to the setting of Rock Cottage.
15. In vistas from Cofton Hill, I am unconvinced by the appellant's argument that the estuary views on approach down the hill would not be entirely blocked by the plot 1 dwelling. Although the Cockwood Conservation Area Character Appraisal (CACA) does not highlight this as an important view, the sense of filtered openness would be lost, and replaced with built form.
16. Along School Hill, the banking would be altered and 3m of hedge removed. Views would instead incorporate the substantial expanse of a 2 storey dwelling, along with hardstanding and parked cars. This would be a marked change which would harmfully impact the verdant character and the pleasing enclosure of the lane on that side. This is all the more important due to the lower visual quality of the boundary treatments on the opposite side of School Lane, whereby existing harm does not justify adding additional. The historic nature of this boundary since the school and School Lane was constructed, as shown on the 1890 map, provides further justification for its retention.
17. With regard to the specific dwelling designs, there has been a clear attempt to address the previous reasons for refusal. They have a more traditional appearance, no glass balustrades, and less glazing. Increased use of vernacular materials of pink rubble stone walls, render, and natural slate for the roofs contribute to this effect.
18. I also accept the appellant's arguments that the designs incorporate all the features identified in Appendix 1 of the CACA, and thus respond to the characteristic features of C19th villas in the village. These include steeply pitched slate roofs with traditional ridge and eave details, rendered walls, small windows set within deep reveals, vertical sliding sash windows, and hedgerows.

They also highlight design cues and links with Rock Cottage and the other larger traditional dwellings, of double height bay windows, projecting barge boards, gables, and the tall and slim chimney stacks. It is also positive that the dwellings would appear as single storey from Cofton Hill.

19. However, the designs also incorporate significant features which I do not find to be so characteristic. Significant areas of glazing would face the estuary. Plot 2 is of a substantial scale and presents imposing massing on its frontage elevation, exacerbated due to the lack of habitable ground floor windows and the modernity of the integral garage. Moreover, the relatively large flat roofed elements on both dwellings do not have precedent in the village, and would appear as disjointed and more modern extensions. The flat roof element on plot 1 would be particularly evident from Cofton Hill.
20. I acknowledge the presented benefits of the flat roofs in reducing the overall height and massing, allowing better retention of views across the site from above, and in blocking solar panels from view. The use of such elements is also suggested to allow the dwellings to be perceived from below as a cascade of buildings going up the hill, and thus reduce their impact. However, I find that despite the overall rhythm and design cues, the flat roof structures would not be subsumed, such that they would be unduly prominent.
21. The proposal would distinctly contrast with the character and appearance of Rock Cottage, negatively drawing the eye away from it despite the boundary screening and additional vegetation proposed.
22. The previous Inspector considered that the site is seen in the context of appearing as garden land surrounded by development, and that it therefore does not contribute to the rural landscape qualities of the countryside at this location. However, the impact on School Hill is a significant difference to the previous proposal, and I am not thus bound similarly to find no harm in terms of the proposal's effect on the wider landscape or AGLV under the LP Policy EN2A. Amongst other matters, EN2A requires that development will be sympathetic to and help to conserve and enhance the natural and cultural landscape and seascape character of Teignbridge, in particular in AGLV.
23. The parties discussed the weight to give to Policy ENV4 as the proposed replacement for Policy EN2A within the Local Plan 2020-2040 (Submission version). I note that ENV4 relates to the whole District, rather than addressing a targeted area as for EN2A. However, in placing most weight on the adopted LP, I do not find such a conflict between the wording and intent of the two policies for this to be determinative regarding the appeal outcome. Both refer that development should be designed to conserve or enhance landscape character and reinforce local distinctiveness.
24. Overall, I find that the proposal would cause harm to the character and appearance of the area, and would fail to preserve the Cockwood CA. It would lead to less than substantial harm to the significance of the CA and to Rock Cottage as designated heritage assets, to which I give great weight as required by the Framework Paragraph 205. Paragraph 208 identifies that less than substantial harm should be weighed against the public benefits of the proposal. I therefore consider these below, prior to concluding on any conflict with the relevant development plan policies.

Housing Land Supply

25. I note the appellant's suggested potential housing supply implications following the Government's proposed revisions to the Framework. However, ahead of the publication of the response to the consultation, including any transitional arrangements which may be put in place, this would be speculation. I have therefore not considered this further.
26. The public benefits of the proposal include the contribution of 2 dwellings towards the District's housing supply, in a location with convenient access to services and facilities with resulting social benefits. The Framework seeks to significantly boost the supply of homes. Paragraph 70 further identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and gives specific support to the development of windfall sites.
27. In order to determine the weight to give to this contribution, I must consider the current level of housing supply. The parties agree the period of 1st April 2024 to 31st March 2029 as appropriate for considering this, that the standard method identifies a minimum housing need for 717 dwellings per annum plus a 20% buffer, and that the Council is only required to identify a minimum of 4 years housing supply under the Framework paragraph 226.
28. I have already found above that the proposal would cause harm to designated heritage assets, and thus conflicts with the Framework. Accordingly, the proposal does not benefit from Framework paragraph 11(d) presumption in favour of sustainable development as a material consideration. The main parties agreed with this approach at the hearing session.
29. Notwithstanding this lack of presumption, the benefits of the proposal's contribution to the housing supply may still be capable of outweighing the harm when undertaking the planning balance.
30. The hearing session considered in detail each contested site making up the Council's housing supply. Differences focused on the extent of evidence of their deliverability, taking into account the relevant guidance, court judgements, and other intelligence on this matter. To my mind, the discussions identified that some of the provision relied upon by the Council would fall out of the deliverable supply. This includes some of the projected windfalls. The 10 year average of 136 dwellings per year was used, compared to the 5 year average of 100 dwellings per year identified in the Council's Land Supply Statement (July 2024) as being appropriate for decision taking. Despite reference to factors such as the covid pandemic outcome and a rise in interest rates, I am still unclear why the published method was not followed.
31. However, I also find that the supply would not be as low as suggested by the appellant, due to several sites where the Council was able to provide up to date intelligence relating to planning applications and expected timescales. I also note that staff resourcing issues have now been resolved, suggesting future improved application determination periods.
32. The Council identifies a housing land supply of 6.75 years. However, I find an erroneous key underpinning assumption. The PPG requires a 4 year supply of housing to be assessed against the 5 year requirement²: "*Both the 5 year*

² Paragraph: 055 Reference ID: 68-055-20240205

housing land supply and the 4 year housing land supply that authorities should demonstrate for decision making should consist of deliverable housing sites demonstrated against the authority's five year housing land supply requirement, including the appropriate buffer." In essence, the Council should assess supply against the 5 year target, and if 4 or more years can be demonstrated against that target, the requirement would be met.

33. The Council identifies a minimum requirement of 3,442 dwellings, based on only 4 years x 717 dwellings + 20% buffer. Assessing supply against this figure is a form of double counting. The supply should instead be assessed against a minimum requirement of 4,302 dwellings, based on 5 years x 717 dwellings + 20%. This would thus result in a much lower oversupply of dwellings.
34. Notwithstanding this, I find it unnecessary to conclude in any detail on each housing site. It is most useful for the purposes of this appeal to apply the appellant's 'worst case scenario' for the housing supply, in relation to my planning balance considerations. The appellant considers there is a deliverable supply of 2,606 dwellings, equating to a 3.03 year land supply with a shortfall of 1,696 dwellings. This would be an undersupply of just under 1 year compared to the Council's requirement.
35. After giving detailed consideration to this undersupply position, including the previous Inspector's approach in this regard, I attach moderate weight cumulatively to the housing provision benefits of the scheme identified above.

Other Matters

36. The Framework Paragraph 83 requires promotion of sustainable development in rural areas, whereby housing should be located where it will enhance or maintain the vitality of rural communities. The proposal would provide very limited economic benefits in terms of employment opportunities during the construction phase, and from local spending of future residents. These benefits would be of minor scale, to which I give minor weight.
37. The Plot 1 dwelling is proposed to be self-build. The hearing session considered the imposition of a suitable condition, with the Council confirming satisfaction that this would suitably ensure that the dwelling to be built as such. I am similarly content with this based on the evidence before me. The specific benefit of a self-build home was identified as that stated in the PPG, in helping to diversify the housing market and increase consumer choice³. The Framework paragraph 70(b) also requires authorities to seek opportunities to support small sites to come forward for self-build and custom-build housing. I give this benefit minor weight.
38. There would be small-scale biodiversity benefits including additional native hedgerow and tree planting, and the installation of bat and bird boxes, to which I give minor weight. The proposal would incorporate sustainable features including solar panels, resulting in a lower energy demand and thus benefiting the environment. Notwithstanding that lower energy demand is to be expected for the majority of new dwellings, this carries minor weight in favour.
39. That the proposed dwelling would meet the appellant's desire to remain in Cockwood due to their family links, is only a private benefit.

³ Paragraph: 16a Reference ID: 57-016a-20210208, Revision date: 08 02 2021

40. Following additional evidence submitted, the Council concludes no detrimental impact on the protected oak tree, with the proposed vehicular accesses for both dwellings being acceptable on balance. I see no reason to find differently. I note the other matters raised in interested party objections, particularly including flooding, traffic and parking, and matters of overlooking and blocking of views. However, as I am dismissing the appeal, it is unnecessary for me to consider these matters further.
41. The site is within 10km of the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation. This is within the Indicative Habitat Impact Zone for these sites which are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). There are likely significant in-combination effects on these sites resulting from increased recreational visitor pressure from new residential development.
42. The Council requires a Habitat Mitigation Regulations contribution of £2,314 to offset these recreation impacts. This was paid and secured by a S111 agreement in August 2024. The Council thus concludes the third reason for refusal to now be addressed, with no effect on the integrity of the European sites. As the Competent Authority, I may only grant permission after having ascertained for myself that the proposed development would not affect the integrity of these protected sites. However, as I am dismissing the appeal on other grounds, I do not need to consider further whether this contribution would adequately mitigate the proposal's effect.

Planning Balance and Conclusion

43. I have identified above that I give moderate weight to the housing provision benefits of 2 new dwellings in this location. I also give minor weight to the proposal's economic benefits, its contribution to the self-build supply, and biodiversity and sustainability benefits.
44. Overall, I find that this does not outweigh the great weight I give to the less than substantial harm to the preservation of the CA, and of the setting of Rock Cottage. The proposal would therefore conflict with the LP Policy EN5, and the Framework paragraphs 206 and 208. It would also conflict with the LP Policies S1, S2, and EN2A, whereby developments should maintain the appearance and historic interest of settlements and open spaces, be of a high quality design that integrates with the character of the adjoining built and natural environment, particularly affected heritage assets, and conserve the landscape character.
45. It would also conflict with the Framework paragraph 135 in its aim to achieve well designed places through developments which are visually attractive, sympathetic to local character and history, and which maintain a strong sense of place.
46. In conclusion therefore, for the reasons given above, the proposal would conflict with the development plan taken as a whole. With no other material considerations indicating otherwise, I conclude that the appeal is dismissed.

L N Hughes

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr Mark Tohill	Appellant
Mr Iestyn John	Partner at Bell Cornwell LLP
Mrs Nicola Burley	Heritage Vision
Mr Neil Tiley	Senior Director at the Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gary Crawford	Case Officer
Mrs Helen Williams	Research Officer
Mr Alex Lessware	Economy and Delivery Manager

INTERESTED PERSONS:

Ms Gillian Taylor	Resident
Mr Ben Kirby	Resident

DOCUMENTS SUBMITTED AT/FOLLOWING THE HEARING

1.	Appellant	Proposed Self-build dwelling condition
2.	Appellant	Start to Finish Report, Third Edition, March 2024, Lichfields
3.	Council	Signed S.111 Form, 14 th August 2024
4.	Council	Submission Version Local Plan Policy EN4: Landscape Protection and Enhancement
5.	Council	Information Note on Submission Version Local Plan Policy EN4