

---

## Appeal Decision

Inquiry held on 8-11 March 2016

Site visit made on 9 March 2016

**by Nick Fagan BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 April 2016**

---

**Appeal Ref: APP/X1118/W/15/3012049**

**Land south of & 37 Langleigh Park, Ilfracombe, Devon EX34 8RA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr & Mrs Barry Thorpe-Smith against the decision of North Devon District Council.
  - The application Ref 57520, dated 16 May 2014 was refused by notice dated 10 October 2014.
  - The development proposed is in outline with all matters reserved for an Assisted Living residential scheme and associated works.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A signed and dated S106 agreement was given to me at the Inquiry. I address this in Other Matters below.

### Main Issues

3. The main issues are whether the proposed development would:
  - (a) harm the character and appearance of the area's landscape, and in particular the North Devon Coast Area of Outstanding Natural Beauty (AONB), Coastal Preservation Area (CPA) and Heritage Coast (HC);
  - (b) constitute major development in the AONB and therefore whether the policy test in paragraph 116 of the National Planning Policy Framework (NPPF) would be engaged;
  - (c) result in significant noise and disturbance to the immediate neighbours at 36 & 38 Langleigh Park due to the proximity of the access and the associated traffic generated;
  - (d) be sustainable development.

### Reasons

#### *Background*

4. The appeal site is approximately half of a green field of rough pasture land 0.49 hectares in area located on the western edge of Ilfracombe immediately to the south of a recent housing development known as Langleigh Park. Although all matters are reserved it is clear that access into the site would be
-

achieved through the site of 37 Langleigh Park, a two storey detached house which would be demolished to make way for it. The site lies within the North Devon Coast AONB, the CPA and the HC and abutting but just outside Ilfracombe's settlement boundary.

5. The illustrative plans show 8 linked blocks of two-storey 1-bedroom self-contained flats linked at the western end by a flat roofed single storey element of communal space. The Design and Access Statement envisages a communal/activities room, dining room and guest bedroom as part of the scheme and I also understand that there would be a warden flat and the ability to summon assistance 24 hours a day 7 days a week.
6. The field slopes fairly steeply upwards from north to south. The illustrative scheme shows a development cut into the lower half of the field such that its rear windows would be below the level of the retained part of the sloping field behind. The 'fill' from this 'cut' would be used as a 3m high bund to be located along the northern boundary of the site, which it is intended to plant with trees and shrubs in order to screen the development from the existing houses in Langleigh Park. The illustrative drawings show the new buildings with 'green' roofs although the appellants made clear at the Inquiry that alternatively the development could have slate roofs instead, dependent on whether the preference was to camouflage the scheme or integrate it into the landscape.

#### *Effect on Character and Appearance of Landscape*

7. A Landscape and Visual Impact Assessment (LVIA) was submitted with the application. This included an assessment of the proposed development's effect both on landscape character and visual effects, that is to say a change to key views and the visual amenities of key receptors such as nearby residents and walkers on the National Trust (NT) land and South West Coast Path. The Council's evidence at the Inquiry was presented by the AONB's consultant and was confined to addressing the proposed development's effect on landscape character and did not specifically address its visual effects. However, there is inevitably an overlap generally between landscape character and visual effects because a change in landscape character must be visible from some viewpoints, and this would be the case here, as acknowledged by the appellants.
8. At the Inquiry the main parties' landscape witnesses produced a statement setting out their agreements and main differences in relation to the development's effect on landscape character. The LVIA methodology changed slightly between the appellants' original submission in 2014 and that in its reassessment at the appeal but this is not a disputed issue between the main parties.
9. The statement included a sketch map delineating the approximate boundaries between 3 areas of potential impact. Area A is essentially the Langleigh valley rising westwards towards the coast including the steep sided slopes to its north and south, and the rising land of the town to the east that overlooks it. Area B is the area immediately beyond it up to approximately 2km from the site, including the whole of the western part of the town, the 'Seven Sisters' and coastal headlands. Area C is the area beyond that.
10. Area C was not assessed by the Council or AONB Partnership (AONBP) and it is agreed there would be no impact on this area resulting from the development.

The sensitivity of Areas A and B was agreed as high. There are minor differences between the Council and appellants in terms of the development's effect on Area B in that the former considers the scheme would have at worst a moderate negative landscape effect whereas the latter consider it would be moderate to minor negative. The main areas of disagreement are on the magnitude of effect and overall level of effect in Area A. I agree that Area A is the key area of impact. This is because, although the development would be visible from certain key viewpoints of the town in Area B, such as the western extension of the cemetery, Capstone Hill and the College, its impact on landscape character would be only really fully perceived from within Area A.

11. Area A contains a number of prominent viewpoints of the site. These include from: Stanbury Copse and certain locations on Slade Road and Hillington (Viewpoints VPs 1 & 3 in the LVIA), in other words from the westward facing slopes on this edge of the town; VP6 from the lane and public footpath at the lower entrance to The Halliards; VPs 7 & 8 from Langleigh Park itself; VPs 9 & 10 from Langleigh Lane and Upper Torrs Park; and particularly from VP12 on the NT hillside to the north-west of the site. From all these views the development's impact on the landscape of the valley would be clearly visible. Whilst the proposal's effect on these views and their receptors was not put forward in evidence by the Council/AONBP, it does clearly demonstrate the extent of the landscape impact.
12. The Council/AONBP consider the proposal would have a large adverse effect on the landscape character in Area A, whilst the appellants argue there would only be a small adverse effect. In view of the agreed 2016 LVIA methodology this would equate to a Year 0 overall effect of moderate to minor negative according to the appellants, and major to moderate negative according to the Council/AONBP. Year 0 is defined as after the development has been completed including the bund on the northern boundary but without time for landscaping to have any screening effect.
13. The appellants consider the residual effect on landscape character (i.e. after the landscaping and green roof mature) would be minor negative. The Council/AONBP discount such mitigation measures because they consider them to be potentially unrealistic or impractical. I am not convinced that such measures could not be implemented but, even if they were, the Council still considers the impact of the development would be unacceptable.
14. The condition of the site itself is good in that there is no landscape deterioration or detracting activities taking place on it. It is located regionally within the North Devon High Coast Landscape Character Area (LCA) and locally within the Coastal Slopes and Combes with Settlement Landscape Character Type (LCT), which are described respectively as being of exceptionally high scenic quality and exhibiting a strong sense of containment often limited by steep wooded combe slopes<sup>1</sup>. The overall strategy for this LCA and LCT is to protect the distinctive linear and contained settlement pattern of the combes and the strong sense of place within the AONB. The AONB Management Plan 2014-19 encourages the preservation and enhancement of this unique landscape, including the nineteenth century field enclosures above Ilfracombe.

---

<sup>1</sup> In the Devon Landscape Character Assessment 2011 & Joint North Devon and Torridge Landscape Character Assessment 2010 .

15. The appellants argue that the site is contained by urban development on three sides. This may be a technically accurate description, but it is only the northern boundary with Langleigh Park that feels urban because the properties to the east have long rear gardens at a lower level than the site, and The Halliards and its extensive garden is raised well above the site and is half concealed by the wooded slopes. The overall impression of the site and its surroundings is rural, albeit that it abuts the western edge of Ilfracombe's settlement boundary.
16. The proposal would keep the western field boundary and strengthen the northern hedge boundary, which currently has a number of gaps in it. But the development would cut into the rising land disturbing the historic field pattern and the proposed landscape bund along the northern boundary would also be alien to the combe's natural form. Although the new housing would be no higher than the highest parts of Langleigh Park itself it would introduce new urban development into this essentially rural area, masking and permanently altering the shape of the lower part of the combe, whose natural contours are crucially important to the landscape character of this part of the AONB.
17. The AONB boundary is topographically defined by the wooded east facing slopes of the Slade valley to the south of the site and Lower Torrs Park to the north. The residential development at Langleigh Park and indeed Upper Torrs Park extend into the AONB and breach this strong physical boundary. However, that is not a reason to further degrade it; on the contrary, it points to the importance of retaining what is left of the natural form of the combe and retaining its original field pattern. The last western part of Langleigh Park was apparently allowed since the Millennium but the original outline permission dates back to the 1970s and so the Council is not being inconsistent in approving that scheme and refusing this one.
18. The western boundary of the town is defined, with the exception of Langleigh Park itself, by Leigh Woods on the south slope of the combe and by the rising NT land to the north-west, which essentially contain the urban development in a bowl surrounded by the higher land in the AONB. The proposal would extend it up the southern slope of the combe.
19. The effects of such a residential development would be permanent because once the flats were sold to individual buyers it would not be practical to reverse it. For the above reasons the proposals are at considerable variance to the landscape and would degrade its integrity; there would be a notable alteration to landscape function resulting from the development of the site; and the 'cut' and 'fill' nature of the development would be an uncharacteristic noticeable change to key aesthetic and perceptual qualities. The magnitude of effect would therefore be large adverse<sup>2</sup>. For these reasons I conclude that the proposed development would substantially harm the character and appearance of the area's landscape.
20. There are a number of 'saved' policies of the North Devon Local Plan (LP) listed in the Council's first refusal reason. I address the issue as to whether they are policies for the supply of housing and out-of-date and the weight to be attached to them in the sub-heading dealing with Sustainability below but these are the relevant development plan policies and so I must decide whether the proposal complies with them.

---

<sup>2</sup> As per the definitions in Table LVIA6, Appendix G of the appellants' landscape evidence

21. Policy ENV1 states that development in the countryside will only be permitted where a rural location is required; it provides economic or social benefits; and it protects or enhances its beauty, diversity of its landscape and historic character. For the reasons given above the proposed development would not comply with the latter criterion. The appellants agreed at the Inquiry that it does not require a rural location. The wording of Policy ENV1 is inclusive such that it is necessary to comply with all three criteria, and so the proposal therefore conflicts with it.
22. Policy ENV2 states that within the AONB development that conflicts with the conservation and enhancement of its natural beauty will not be permitted. The development would harm the AONB for the above reasons, not conserve and enhance it, and so would not comply with this Policy.
23. Policy ENV3 states that development within the HC will only be permitted where it is consistent with the conservation, protection and enhancement of its natural beauty and one of another choice of three criteria. All these criteria align with the main objectives for HCs. Whether or not the proposal complies with either of the latter three criteria is irrelevant because, for the above reasons, it is inconsistent with the conservation, protection and enhancement of its natural beauty and so would conflict with this Policy.
24. Policy ENV5 states that development within the CPA will only be permitted where it does not detract from the unspoilt character of the area. Paragraph 5.1.4 of the LP makes clear that although the first designation of the CPA in 1966 was to protect unspoilt stretches of coastline, its inland boundary was extended inland to include additional areas of coastal fringe under increasing pressure for development. The site is, in my view, one such area. Although the area may not entirely 'unspoilt' in that Langleigh Park is adjacent to the site, Langleigh Park is outside the CPA boundary whereas the currently green field site is within it and for the above reasons the proposal would fail to comply with this Policy.
25. Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Paragraph 114 has two bullet points the second of which states that local planning authorities should maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as HC. This second bullet point, unlike the first, makes no mention of Local Plans and so my interpretation is that paragraph 114 also applies to planning decisions. Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and AONBs, which have the highest status of protection in relation to landscape and scenic beauty. The proposal would not protect, conserve, or enhance the landscape or scenic beauty of the AONB or HC and so would be contrary to Section 11 of the NPPF.
26. The proposed development would therefore fail to comply with the most relevant policies in the development plan, in other words those relevant to the countryside and areas designated for their landscape beauty, and to similar national policy in the NPPF with which they accord.

### *Major Development in AONB?*

27. NPPF paragraph 116 states that permission should be refused for major developments in nationally designated landscapes including AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest.
28. Planning Practice Guidance (PPG) states: *"Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context."*<sup>3</sup> This advice synchronises with the judgements in the court cases referred to by the appellants.
29. The second sentence of NPPF paragraph 116 states that consideration of major applications in designated landscapes should include an assessment of the need for the development; the cost of and scope for developing elsewhere outside the designated area; and any detrimental effect on the environment and the extent to which that could be moderated. But from my reading of paragraph 116 these matters only fall to be considered if the development is defined as major – they are not a definition of what constitutes major development.
30. The appellants variously considered that the size and indicative scale of the development, in terms of the size of the site, the number of households and the population who would occupy it should be compared to the whole of Ilfracombe and to just the nearest western part of it. It was accepted by both sides that the local context was important, in the sense that a development of this size and scale on the edge of a small village would be more major in its context than in this location, whereas if it was on the edge of London it could not be said to be major.
31. In my view the word 'context' as set out in the PPG relates simply to the factual nature of the size and scale of development compared to that in its vicinity, in this case the urban development on the west of Ilfracombe visible from the site. It does not mean the effect of the development on the AONB. I conclude that in such a context the proposed scheme is clearly not major development.
32. However, the PPG also states, in the same paragraph as that quoted above: *"The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 116 is applicable."*
33. The second sentence confirms the NPPF's stance to conserving landscape and scenic beauty irrespective of whether the development is considered to be major. I have concluded above that the proposed development would fail to do so and this harm is a significant element in the planning balance, which I deal with below.

---

<sup>3</sup> PPG Reference ID: 8-005-20140306

### *Living Conditions*

34. I accept that the demolition of dwellings is not uncommon in order to provide access to development sites and that no counter noise evidence was put forward by the Council to challenge that provided by the appellants.
35. However, I have a number of concerns about the appellants' noise impact assessment. No evidence is provided within it of the actual noise readings for the am and pm peaks. I am also unconvinced that the assessment of such peak hours is the best way to realistically assess the overall noise impact of the development, which the appellants insist is Class C2 and therefore would probably not experience such peak flows.
36. Although the appellants' noise evidence concludes that the ambient noise climate will increase by 1dB(A) over a 12-hour period it is unclear how this was arrived at because it refers to a table, which I have not had sight of.<sup>4</sup>
37. The Transport Statement submitted with the application assesses that between 0700 and 1900 there would be 142 two-way pedestrian trips (12 per hour) and 72 two-way vehicle trips (6 per hour) and there will of course be additional trips outside these hours.
38. Whilst such a level of traffic could not be described as heavy or significant on a normal residential street, such an increase must have regard to the existing situation. There are 7 houses in this small cul-de-sac off Langleigh Park. The majority of the surface of this quiet enclave is brick paved and the front gardens of the houses facing onto it are open. I have heard evidence from neighbours that children from these houses regularly play in the front gardens and on the cul-de-sac itself and, given its design and the fact that these are family houses, this is to be expected.
39. Demolishing No 37 and putting in its place an access road to the proposed development, likely to comprise 30 individual flats, would clearly result in a marked proportionate increase in the levels of traffic into this cul-de-sac. It would also be likely to result in different types of traffic, for instance ambulances and HGVs delivering supplies for the care elements in the scheme. Such an increase would result in significant disturbance to the adjoining neighbours at Nos 36 and 38.
40. Even assuming the occupiers of Nos 36 and 38 would not suffer significant noise as the appellants' evidence maintains, the introduction of a vehicular and pedestrian access route so close to their side boundaries running past their rear gardens and No 36's side windows would undoubtedly result in significant disturbance compared with the relative peace and tranquillity that the neighbours in these houses currently enjoy.
41. For these reasons I conclude that, whilst the level of traffic generated by the development would, on balance, be unlikely to significantly increase noise levels for the occupiers of Nos 36 and 38, it would result in significant disturbance relative to the existing situation in this small quiet cul-de-sac. LP Policy DVS3 (Amenity Considerations) states that development will not be permitted where it would harm the amenities of any neighbouring uses or the character of the surrounding area. For the above reasons the proposed development would not comply with this Policy.

---

<sup>4</sup> Table 2 mentioned in paragraph 2.3 of John Goodwin's evidence

### *Sustainability and the Planning Balance*

42. I have concluded above that the proposed development would substantially harm the character and appearance of the area's landscape contrary to 'saved' LP Policies ENV1-3 and 5. But the appellants argue that these policies are out-of-date because they are policies for the supply of housing as indicated in the recent *Richborough* Court of Appeal judgement<sup>5</sup>.
43. In accordance with that judgement, and noting that this is the first time that the Court of Appeal has ruled on this specific issue, I agree that all these Policies are policies for the supply of housing. Because the Council cannot demonstrate a 5-year supply of deliverable housing sites NPPF paragraph 49 states that such policies should not be considered up-to-date. This means that the second bullet point of NPPF paragraph 14 is engaged, which states that in such circumstances permission should be granted unless:
- "-any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- specific policies in this Framework indicate development should be restricted."*
44. Footnote 9 on page 4 of the NPPF makes clear that this second exception includes policies relating to land designated as AONB and HC, in other words those set out in NPPF paragraphs 109, 114 and 115. I have concluded above that the development would be contrary to these policies. The two exceptions to the default position of granting permission quoted above are expressed in the alternative: they are 'either or' exceptions; it is not necessary to demonstrate compliance with both. The second exception clearly applies here.
45. However, in the alternative and in order to separately assess whether the proposal would constitute sustainable development, I will also consider the first exception to the presumption to grant planning permission as quoted above. In effect this means weighing up the 3 dimensions of sustainable development: economic, social and environmental.
46. Much time was devoted at the Inquiry deliberating whether the proposal was for Class C2 (Residential Institutions) or C3 (Dwelling Houses). That is not an issue on which it is necessary for me to rule because from the evidence presented I am clear that there is a need both for C2 and C3 uses including an increasing need for housing for elderly people both with and without care. This is because of the lack of a 5YHLS, and the Council's acknowledgement that the shortfall is material since there is only currently a 4.1 to 4.3 years supply. The Council's argument that the local housing market cannot absorb more than a limited build-out rate is not one to which I can ascribe any significant weight in the absence of a 5YHLS. I am clear that the proposal would therefore have an important social benefit, albeit that 30 dwellings is only a small fraction of the 5YHLS shortfall.
47. It would also have an economic benefit proportionate to its size in terms of construction jobs on the site and the additional spending power of the completed scheme's residents and the attendant multiplier effects on Ilfracombe's economy. But these proportionate benefits could clearly be

---

<sup>5</sup> Suffolk Coastal DC, Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & Cheshire East BC & SSCLG - 17 March 2016 [2016] EWCA Civ 168

achieved by building in other nearby locations, such as the proposed Southern Extension land allocation, which lie outside the AONB, CPA and HC and so I do not give them great weight.

48. There would however be substantial harm to these landscape designations contrary to development plan and NPPF policies on designated landscapes, a significant environmental disbenefit which would not outweigh these social and economic benefits. There would also be significant harm to the living conditions of the occupiers of 36 and 38 Langleigh Park.
49. In these circumstances I conclude that the above adverse effects of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. It would not be sustainable development and there are no other material considerations that suggest it should be allowed.

### **Other Matter**

50. The planning obligations in the S106 Agreement are conditional on the grant of permission. Since I am dismissing the appeal there is no need for me to consider them any further.

### **Conclusion**

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

*Nick Fagan*

INSPECTOR



## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Opening submissions on behalf of Appellants
2. Opening submissions on behalf of LPA
3. *William Davis* High Court judgement [2013] EWHC 3058 (Admin)
4. Core Documents List
5. Objection by Mr Parkhouse
6. Appeal decision 3001600 referred to by Mr Parkhouse
7. Final Statement of Common Ground dated 9 March 2016
8. Note on matters of agreement and difference between Peter Leaver & Carly Tinkler including Map of Areas and Table A setting out landscape character effects
9. Bus timetables and maps of bus stops and walking routes to them submitted by Mrs Doody
10. Supplementary Table showing differences in applying various % of the population over 65 and 75 years of age submitted by the Council
11. Further similar figures pertaining to this matter also submitted by the Council
12. Statistics on Later Life in the UK dated February 2016 submitted by the appellants
13. Refresh of the Commissioning Strategy for Extra care Housing (2009) dated August 2015, Devon County Council submitted by the Council
14. North Devon and Torridge Infrastructure Planning Evidence base Report including Extra Care Housing dated March 2016, Devon County Council submitted by the Council
15. Signed 106 Agreement dated 11 March 2016
16. Closing submissions on behalf of LPA
17. Accompanying *Scrivens* High Court judgement [2013] EWHC 3549 (Admin)
18. Closing submissions on behalf of Appellants

---

*End of Documents List*