

**Town and Country Planning Act 1990 Section 78 Appeal**

**Land to the South of White Rock adjacent to Brixham Road (“Inglewood”), Paignton,  
Torbay, TQ4 7BQ**

**PINS Ref: APP/X1165/W/20/3245011**

**LPA Ref: P/2017/1133**

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**APPEARANCES AND  
OPENING SUBMISSIONS ON BEHALF OF  
TORBAY COUNCIL**

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Miss Nina Pindham of Counsel

Instructed by Ailsa Delaney, Solicitor, Legal Services, Torbay Council

Will be calling:

Roger English BSc (Hons), Manager, South Devon AONB Partnership and Staff Unit

Stephen Knott BA Dip LD CMLI, Senior Associate Director of Landscape Architecture, Jacobs

David Pickhaver BA (Hons) MA MRTPI, Senior Planning Officer, Torbay Council

**INTRODUCTION**

1. This is, at its heart, a very simple appeal. Due to the continued efforts of all parties (including Brixham Town Council as Rule 6 Party) over the course of the extended adjournment the range and number of issues between the parties have narrowed significantly. The key issue which remains between the Council and the Appellant is the acceptability of the acknowledged “noticeable”<sup>1</sup> impact of the appeal scheme on the landscape, particularly the South Devon AONB. It is common ground the appeal site is within the setting of the AONB.

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<sup>1</sup> CD 2.31 July 2018 LVIA Review, DW Partnership page 18 §41

2. The determination of this issue is undoubtedly a matter of subjective judgment and so the main task of the inquiry is to establish the correct decision-making framework and ensure all relevant information is considered.
3. In applying this information to the decision-making framework, the Council will invite the Inspector to agree with it and previous decision-makers who concluded the appeal site was too important as rural countryside in its context for development to take place.
4. In 1997 the Secretary of State, giving substantial weight to the need to preserve the Dart Valley AONB, “as one of the finest riverine landscapes in the country”,<sup>2</sup> concluded that despite extensive mitigation planting developing the site (in that case for employment use) would have “a significantly adverse and wholly unacceptable visual impact on the AONB, the AGLV [the former landscape designation attached to the site itself, removed when local landscape designations were discouraged] and the surrounding countryside”.<sup>3</sup>
5. This is, of course, an application for housing development rather than employment use. But the high quality of the affected landscape and the need to give substantial weight to the need to preserve – or, using the statutory language, conserve and enhance<sup>4</sup> - the natural beauty of the AONB are just as they were when the Secretary of State rejected the prospect of developing the site, even after factoring in the benefits of the proposed development.
6. Also worth noting is the Inspector’s comments that the “rural skyline around Torbay” was needed to provide “an appropriate setting for the AONB”.<sup>5</sup> There has been subsequent additional development on this skyline in the intervening years, but that is no reason for everyone to throw up their hands and give up. Quite the contrary: it makes it all the more important to conserve and enhance the rural elements that remain in the AONB’s setting and make a material contribution to its natural beauty. The site is one such important rural element.
7. Considering the appeal scheme before the inquiry, both the AONB’s Manager, Mr English, and the independent landscape consultant engaged by the Council to provide additional

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<sup>2</sup> CD 7.3(b) §12

<sup>3</sup> Ibid

<sup>4</sup> Section 85 Countryside and Rights of Way Act 2000

<sup>5</sup> CD 7.3(a) §12.39

scrutiny of the landscape and visual impact of the development, Mr Knott, concluded that the landscape harm that would be caused by the appeal scheme was unacceptable.

## LANDSCAPE

8. Mr English will demonstrate that there is a strong relationship between the appeal site and the Dart Estuary component of the AONB, and, given the appeal site's complementary rural character, it makes a significant contribution to the special qualities of the AONB that define its character.
  
9. Mr English points in particular to the conflict with three special qualities, defined as (1) iconic wide, unspoilt and expansive panoramic views; (2) areas of high tranquillity, natural nightscapes; and (3) a variety in the setting to the AONB. The identification of the AONB's setting as a special quality in and of itself is further explained in the AONB Management Plan: the AONB's rural hinterland of undeveloped countryside is particularly significant because part of its natural beauty derives from wide panoramic views,<sup>6</sup> and as such the deeply rural character of the land adjoining the AONB forms an "essential setting" to the AONB.<sup>7</sup> Mr English concludes, in light of the evidence provided by Mr Knott, that the significant adverse effect of the development on certain of these views would unacceptably harm these special qualities. As to the "tranquillity" special quality, Mr English will point out that the relevant consideration is "relative", not absolute tranquillity, and because the appeal development would not conserve and enhance the tranquillity of the AONB, as a matter of common sense, it harms that special quality.
  
10. Additional factors noted by Mr English include the adverse effect of additional night-time glare from the proposed development and adverse impacts on four further special qualities: ria estuaries and a network of associated watercourses, deeply rolling patchwork of agricultural landscape, landscape with a rich time depth, and an ancient and intricate network of winding lanes, paths and recreational routes. This is because the AONB in this location is heavily reliant on the complementary landscape character of its setting.

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<sup>6</sup> CD 6.10 AONB Management Plan page 19 Lan/P5 "The character of skylines and open views into, within and out of the South Devon AONB will be protected...improvements to reduce the visual impact of unsightly past development"

<sup>7</sup> CD 6.10 page 19 Lan/P7

11. The site, being rural undeveloped countryside situated on the undulating downslope of a ridgeline facing the AONB, therefore comprises precisely the type of land that should be protected from development given its important role in conserving and enhancing the natural beauty of the AONB. Mr English points to the breach of AONB Management Plan policies Lan/P7, Lan/P5, and Plan/P2 by the development proposals.
12. Taking a wider view on the impact on the landscape as a whole, Mr Knott will demonstrate that the development breaches identifiable barriers to further urban development (the Brixham Road and the ridgeline south of White Rock, also known as White Rock 1). He concludes the development would both visually and actually contribute to closing the identified settlement gap between Paignton (Goodrington) and Galmpton. This is in a highly sensitive location in landscape terms, being identified as such in the document providing the most important description of this, the Torbay LCA (identified as 10 North Galmpton Area of Local Character).<sup>8</sup> It is also where both residents and economically critical tourists first experience a fine open direct view of the AONB after cresting the ridge at White Rock.
13. Mr Knott has identified a number of locations, including some iconic views from the AONB, where the visual effects of the development would be significantly adverse. The Inspector will be invited to consider the impact of the development on these specific views during the site visit.
14. Importantly, both Mr English and Mr Knott considered the impact of the development once mitigation was established. They both concluded that the degree of residual harm would be remain unacceptable.

### PLANNING BALANCE

15. Mr English's view, as the best-qualified expert to comment on the AONB and what makes it so special, is that the harm to the AONB would be such that it provides a clear reason for refusal under the first sentence of paragraph 172 of the NPPF. His reading of the NPPF is that this engages footnote 6 so as to dis-engage the tilted balance under paragraph 11(d)(i).

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<sup>8</sup> CD 6.2 Torbay LCA Part 2 page 35 internal; second page of CD extract

The Council's qualified planning expert, Mr Pickhaver, agrees that this is both a correct reading of the NPPF and a reasonable conclusion to come to.

16. Mr Pickhaver is clear however that even in the alternative scenario, which is applying the tilted balance, the harm that would be caused by the development would significantly and demonstrably outweigh the benefits when assessed against the policies in NPPF taken as a whole.
17. He fully accepts the provision of housing, particularly affordable housing, should be given significant weight in the planning balance. The Council accepts it is unable to demonstrate a three-year supply of housing land and that this shortfall needs to be addressed. The Council has not been sitting on its laurels or failing to act pending a review of the Local Plan. It has been actively seeking to identify, secure funding for, and bring forward sustainable housing development. The initial conversations regarding the appeal site attest to that positive proactive approach. Those conversations, however, were held on the basis that the suitability of the site for development hinged on acceptable nature conservation *and* AONB impacts. It is on this latter point that, having thoroughly scrutinised the matter, the Council determined it could not support the proposed development of the site.
18. It follows that the NPPF in this case does not represent a material consideration that indicates permission should be granted contrary to the development plan. And the proposal is, without doubt, contrary to the development plan. This comprises both the Torbay Local Plan and the Brixham Neighbourhood Plan. It is an unallocated greenfield site outwith any built up area or settlement boundary, would curtail a view and settlement gap recognised in the Neighbourhood Plan as being valued and worthy of protection, and cause unacceptable harm to the landscape and the special qualities of the South Devon AONB, diminishing its natural beauty contrary to the aim to conserve and enhance it.

## CONCLUSION

19. As such the appeal proposal conflicts with the development plan, would lead to significant, demonstrable, and unacceptable landscape harm, and no material consideration indicates that permission ought to be determined other than in accordance with the development plan.

20. The Council will accordingly request that the appeal be dismissed.

Nina Pindham

No5 Chambers

12 January 2021