



Department for
Communities and
Local Government

12 June 2014

Mr J Woodward
Woodward Smith Chartered Architects
6 Tuly Street
BARNSTAPLE
Devon
EX31 1DH

Our Ref: APP/X1118/V/13/2201290
Your Ref:

Dear Mr Woodward

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION BY MRS A THORNEYCROFT
AT 'BRACKENS', SAUNTON, BRAUNTON, EX33 1LG
APPLICATION: REF 54779**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr Paul Griffiths BSc(Hons) BArch IHBC, who held a hearing on 9 January 2014 into your client's application for demolition of the existing and the erection of 1 new dwelling together with refurbishment of an existing annexe, associated landscaping, and alterations to vehicular access at 'Brackens', Saunton, Braunton, EX33 1LG in accordance with application reference 54779 dated 17 October 2012.
2. On 2 July 2013 the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that the application be referred to him instead of being dealt with by the relevant planning authority, North Devon District Council.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and also agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Matters arising after the close of the inquiry/hearing

4. Following the close of the hearing, the Secretary of State was forwarded a letter dated 12 February 2014 from Nick Harvey MP together with an enclosed copy of a letter dated 31 January 2014 from Mr D H Griffiths. The Secretary of State has taken account of these letters but he does not consider that they raise new matters which would require him to refer back to parties prior to reaching his decision. Copies of the letters may be obtained on written request to the address at the foot of the first page of this letter.
5. On 6 March 2014, following receipt of the Inspector's report, Government published new Planning Guidance (the Guidance) and withdrew a number of former planning practice guidance documents. On 14 March 2014, the Secretary of State wrote to parties inviting them to submit comments on the Guidance. Responses were received on 26 March 2014 from your company and from the Council. In determining this case the Secretary of State has taken account of the Guidance and he has not had regard to Circular 11/95 which has now been withdrawn.

Policy considerations

6. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan comprises the saved policies of the North Devon Local Plan of 2006 (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR4.1 to 4.6.
8. The Secretary of State has also taken The National Planning Policy Framework (the Framework) into account as material consideration.

Main issues

9. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR9.2 and the relationship of the proposal to the development plan.

Termites

10. The Secretary of State notes the Inspector's view (IR9.3 - 9.7) that, subject to proper controls, through conditions and parallel legislation, the risk involved in developing the site, as a consequence of the potential presence of termites upon it, can be managed. In such circumstances, in that context, the potential presence of termites on the site, and the risk of them spreading was regarded by the Inspector as not being grounds to refuse planning permission for the proposal. However, the Secretary of State notes that BRE is not satisfied that the colony has been eradicated and that there remains a significant risk should termites spread from the site (IR7.1). The Secretary of State attributes more weight than the Inspector to the potential catastrophic economic, environmental

and social consequences of the spread of termites and for this reason disagrees with the Inspector's conclusion on this point. While recognising that any future proposal would need to be considered on its merits and on the basis of the evidence available at that time, he would prefer to see an approach that delays redevelopment of the site until it has been confirmed via the UK Government Termite Eradication Programme that the termite colony has been eradicated.

Character and Appearance

11. The Secretary of State has given very careful consideration to the Inspector's analysis at IR9.8 – 9.19. For the reasons given by the Inspector, he agrees that the increased visual presence of the proposal, coupled with unresolved aspects of the design of the house, and the relationship it would have with the annexe, mean that it would appear much more strident, and incongruous, in its context (IR9.20). He shares the Inspector's view (IR9.21) that, as a consequence, the proposal would cause significant harm to the character and appearance of the AONB, Heritage Coast, and Coastal Protection Area and that it fails to accord with LP policies DVS1, ENV1, ENV2, and ENV3. The Secretary of State also agrees with the Inspector that the scheme would not conform with the approach of the Framework to design, and protected, or valued, landscapes (IR9.21)

Living Conditions

12. The Secretary of State sees no reason to disagree with the Inspector's comments in respect of living conditions at IR9.22 – 9.23.

Other Matters

13. The Secretary of State sees no reason to differ from the Inspector with regard to the other matters set out at IR9.24 – 9.25.

Conditions

14. Having had regard to the Inspector's comments on conditions (IR9.28 – 9.37) and the suggested conditions set out at annex A, the Secretary of State is satisfied that those conditions meet the requirements of paragraph 206 of the Framework. However, he does not consider that the suggested conditions would overcome his reasons for refusing this application.

Overall Conclusions

15. Like the Inspector (IR9.26), the Secretary of State is satisfied that the proposal would be acceptable in terms of its impact on biodiversity, highway safety, and the living conditions of neighbouring residents. However, as set out at paragraph 11 above, he has identified a number of conflicts with the development plan in this case and he considers that, overall, the scheme conflicts with the development plan. He has also identified conflicts with national policy (paragraph 11 above). Overall the Secretary of State concludes that the material considerations are not of sufficient weight to determine the application other than in accordance with the development plan.

16. The Secretary of State has also attributed more weight than the Inspector to the risks associated with the spread of termites and has disagreed with the Inspector's conclusion on this point.

Formal Decision

17. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses your client's application for planning permission for demolition of the existing and the erection of 1 new dwelling together with refurbishment of an existing annexe, associated landscaping, and alterations to vehicular access at 'Brackens', Saunton, Braunton, EX33 1LG in accordance with application reference 54779 dated 17 October 2012.

Right to challenge the decision

18. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

19. A copy of this letter has been sent to North Devon District Council and the Buildings Research Establishment. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date 3 March 2014

The Town and Country Planning Act 1990

Application by Mrs A Thorneycroft

To

North Devon District Council

Inquiry held on 9 January 2014

'Brackens', Saunton, Braunton EX33 1LG

File Ref: APP/X1118/V/13/2201290

File Ref: APP/X1118/V/13/2201290
'Brackens', Saunton, Braunton EX33 1LG

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 2 July 2013.
- The application is made by Mrs A Thorneycroft to North Devon District Council.
- The application Ref.54779 is dated 17 October 2012.
- The development proposed is demolition of the existing and the erection of 1 new dwelling together with refurbishment of an existing annexe, associated landscaping, and alterations to vehicular access.
- The reason given for making the direction was that the proposal raises matters that are of substantial regional and national controversy.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application: the potential impact of the development and the possible spread of the existing termite colony, and any other matters the Inspector considers relevant.

Summary of Recommendation: The application be refused.

1. Procedural Matters

- 1.1 After the proposal was called in for determination by the Secretary of State¹, a Public Inquiry was arranged. Given the positions adopted by the main parties in advance of the event, and the consequent lack of legal representation, I decided that it would be a better use of time, and a more effective way of interrogating the evidence, to deal with the matter by way of a Hearing. No-one raised any objection to that and in the absence of any prejudice to any party's interests, I proceeded accordingly.

2. The Site and its Surroundings

- 2.1 As set out in the Statement of Common Ground², the site lies to the south of, and is accessed from, the B3231. It is occupied at present by a bungalow, 'Brackens' and a detached annexe. The garden falls to the south and the lower part contains a swimming pool and ancillary accommodation. To the west of the site lies 'The Dunes', another detached bungalow. 'Brackens', 'The Dunes', and their gardens, are the site of an historic termite infestation, currently under the control of the UK Government's Termite Eradication Programme.
- 2.2 Beyond 'The Dunes' lie 'Surf' and 'The Pines', also detached bungalows. These four dwellings are the eastern extremity of a row of bungalows and houses that front the B3231 to the north and run west to the car park that serves Saunton Sands, looking out over the golf links at Saunton Golf Club, to the south. The site and surroundings lie outside development limits as reflected in the development plan, but within the North Devon Area of Outstanding Natural Beauty³, the Heritage Coast, and the Coastal Preservation Area. The site is in relatively close proximity to the Braunton Burrows Special Area of Conservation⁴, and Site of Special Scientific Interest⁵, and lies within a UNESCO Biosphere Reserve.

¹ Referred to hereafter as SoS

² Referred to hereafter as the SoCG

³ Referred to hereafter as the AONB

⁴ Referred to hereafter as the SAC

3. The Proposal

- 3.1 In very simple terms, the **proposal involves the replacement of 'Brackens'** with a two-storey dwelling, on a similar footprint, built in termite-resistant masonry. The annexe would be altered to be more termite-resistant, reflecting the materials of the proposed replacement dwelling. There would be minor, attendant alterations to the garden, and changes to the access.

4. Planning Policy

- 4.1 The development plan includes the North Devon Local Plan of 2006⁶. LP Policy ENV1 only permits development in the countryside, that is outside development limits, where a rural location is required; it provides economic or social benefits to the local community; and it protects or enhances the beauty and diversity of its landscape, its historic character, the wealth of its natural resources, and its ecological, recreational and archaeological value.
- 4.2 LP Policy ENV2 refers to development in the AONB setting out that proposals that fail to conserve or enhance its natural beauty, wildlife, and cultural heritage, will not be permitted. LP Policy ENV3 takes a similar approach to development in the area of Heritage Coast.
- 4.3 Development in Coastal Preservation Areas is covered by LP Policy ENV5. This will only be permitted where it would not detract from the unspoilt character and appearance of the area. Any such development should be required for the benefit of the community or for the purposes of agriculture or forestry; or in connection with public access for informal recreation; or require a coastal location and cannot reasonably be located outside the protected area.
- 4.4 LP Policy DVS1 covers design and only permits proposals that meet certain design principles⁷ while LP Policy DVS2 deals with landscaping subject to a range of what are termed '**Landscape Design Principles**'⁸. LP Policy DVS3 covers amenity considerations and does not permit development that would harm the amenities of any neighbouring use or the character of the surrounding area through, amongst other things, loss of privacy or daylight.
- 4.5 LP Policy ENV9 does not permit development that would harm the integrity, or conflict with the nature conservation objectives, of a designated or candidate SAC or UNESCO Biosphere Reserve. LP Policy ENV10 approaches SSSIs in a broadly similar fashion as does LP Policy ENV11 in relation to statutorily protected species.
- 4.6 LP Policy TRA6 permits development that would provide for safe access onto and egress from the highway for all forms of travel serving the site; where the function of the road network or the safety of highway users is not harmed; and the character and setting of the locality is not harmed by any highway works necessary to accommodate the traffic generated. LP Policy TRA8 only permits residential development that provides an adequate level of off-street parking.

⁵ Referred to hereafter as SSSI

⁶ Referred to hereafter as LP

⁷ Set out in Table 2B on pages 26-28 of the LP

⁸ Set out on page 28 of the LP

- 4.7 The National Planning Policy Framework⁹ is an important material consideration. Of particular relevance, the core principles say that we should always seek to secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings, and that the intrinsic character and beauty of the countryside should be recognised.
- 4.8 More particularly, paragraph 60 explains that planning decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.
- 4.9 Paragraph 115 says that great weight should be given to conserving landscape and scenic beauty in, of relevance to this case, AONBs, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 114 sets out the importance of maintaining the character of the undeveloped coast, protecting and enhancing its distinctive landscape, particularly in areas defined as Heritage Coast. Paragraph 109 tells us that the planning system should contribute to, and enhance, the natural and local environment by protecting and enhancing valued landscapes.

5. The Case for the Applicant

- 5.1 The case for the applicant is set out in the Proof of Evidence prepared by Woodward Smith Chartered Architects. In essence, and having regard to various concerns raised by neighbouring residents, the applicant adopts the **Council's position that the proposal, as amended, is acceptable in all respects**, subject to appropriate conditions, and accords with the development plan.
- 5.2 The approach to the design of the new dwelling is fully set out in the Design and Access Statement¹⁰, submitted with the original application. I deal with this approach in some detail below.

6. The Case for the Council

- 6.1 The case for the Council is set out in their Proof of Evidence. In simple terms, after securing changes to the original design from the applicant, the Council is content that despite the increase in height proposed, the replacement dwelling proposed would not harm the character or appearance of the immediate area, the AONB, the Heritage Coast, or the Coastal Protection Area and, subject to conditions, it need cause no harm to the living conditions of adjoining occupiers. Neither, would the proposal raise any issues in terms of biodiversity or highway safety. As such, it would comply with the development plan.
- 6.2 Having regard to the input from the Building Research Establishment¹¹ in their role leading the UK Government Termite Eradication Programme, the Council is satisfied that subject to strict controls, that can be secured by appropriately worded conditions, augmented by the Forestry Commission Restriction of Movement Order, the proposal would not lead to any increased risk in terms of the potential spread of termites.

⁹ Referred to hereafter as the Framework

¹⁰ Referred to hereafter as DAS

¹¹ Referred to hereafter as the BRE

7. The Case for the BRE

- 7.1 The position of the BRE as part of the UK Government Termite Eradication Programme is set out in their comprehensive report. This explains the history of the infestation and measures that have been taken, to date, to deal with it. Notwithstanding that no termite activity on the site has been detected for three years, the BRE is not satisfied that the colony has been eradicated¹². As a consequence, it is accepted that the proposal would give rise to significant risks in terms of termite spread from the site, especially given the potential for residual, above-ground populations having been maintained in inaccessible building timbers **within 'Brackens'**.
- 7.2 However, the BRE is content that carefully managed and supervised, and under the auspices of the Forestry Commission Restriction of Movement Order, the demolition of 'Brackens', and the disposal of its timber, and other materials, and the subsequent construction of the replacement dwelling, need cause no additional risk of termite spread, over and above what already exists. Indeed, demolition would present an opportunity to determine whether or not residual termite activity persists within the property.

8. Interested Persons

- 8.1 A number of local residents made written representations at application stage and more recently following the call-in. Local residents participated fully in the proceedings and expanded upon what has been put forward in writing¹³.
- 8.2 In short, there are grave concerns that the proposed demolition and construction will increase the risk of termites spreading to other properties nearby, and further afield. Doubt was expressed about the extent to which conditions, the Forestry Commission Restriction of Movement Order, and supervision, could effectively protect against that likelihood. The position adopted is that 'Brackens' would be better left alone until there is some certainty about the eradication of the termite colony.
- 8.3 The approach to the design of the proposed dwelling was questioned and, in **particular, the relevance of Lutyens' architecture**, and the chosen plan-form, to the local area, and the scale of the dwelling proposed, given the particular characteristics of the site, and its immediate surroundings. A larger, more widely visible house than that which currently occupies the site was thought to have a harmful impact on the AONB and Heritage Coast. Moreover, the dwelling proposed would have a significant visual impact on existing dwellings to the west and there would be the potential for overlooking that would undermine the living conditions of the occupiers thereof.

9. Inspector's Conclusions

- 9.1 The application was called in on 2 July 2013. The matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application were the potential impact of the development and the possible spread of the existing termite colony, and any other matters the Inspector considers relevant.

¹² Such a conclusion would require no sign of termite activity on the site for ten years

¹³ Attached to this report as Documents 1 and 2

- 9.2 With that in mind, there are, on my analysis, three main issues to consider. These are the effect of the proposal on (1) the existing termite colony and the potential for it to spread; (2) the character and appearance of the area, bearing in mind the various designations; and (3) the living conditions of adjoining occupiers through visual impact and potential overlooking.

Termites

- 9.3 Given the possible ramifications, local residents are right to be concerned about the potential for termites to spread from the site to adjoining sites, and further afield, as a result of the proposal. However, that risk is already present, and the resurgence of the colony in 2009, after initial treatment in 1999-2000, shows what might happen if the infestation site is left without vigilant and expert supervision.
- 9.4 It is fair to say that the proposal, and in particular **the demolition of 'Brackens'**, the disposal of the resulting debris, and movement of soil, is a source of potential risk. However, if that process is properly managed through conditions, a matter I address in some detail below, allied to the Forestry Commission Restriction of Movement Order, there is no good reason to differ from the BRE view that the risk involved in the proposed development can be properly controlled.
- 9.5 Points were made about the enforceability of such conditions and requirements but the involvement of at least two members of the termite monitoring team **of the UK Government's Termite Eradication Programme for the duration** of the process, a matter dealt with below, is sufficient, in my judgement, to alleviate any concerns in that regard.
- 9.6 In relation to soil movement, none can be removed from the site under the terms of the Forestry Commission Restriction of Movement Order and, in any event, no removal is proposed. Disturbance of the soil has the potential to increase risk but I heard that because of their sensitivity to light, the response of termites to the movement of soil above them would be to dig deeper, rather than to move away from the disturbance laterally. Moreover, the foundation design of the new dwelling, a matter I return to below, could serve to control the extent of soil disturbance and movement that might prove necessary.
- 9.7 In simple terms, subject to proper controls, through conditions and parallel legislation, the risk involved in developing the site, as a consequence of the potential presence of termites upon it, can be adequately managed. In that context, the potential presence of termites on the site, and the risk of them spreading, is no good reason to refuse planning permission for the proposal.

Character and Appearance

- 9.8 **'Brackens'**, and its neighbours, **'The Dunes'**, **'Surf'** and **'The Pines'** are single-storey dwellings and, built into the bank to the south of the Saunton Road, barely visible from the north, or, more importantly, from the permissive footpath within the confines of the golf links, that runs to the south of their **gardens. Aside from the annexe that serves 'Brackens' which is more visible**, especially from the first tee of the golf links, the conclusion to the row of houses and bungalows that stretched east from the car park at Saunton Sands is low-key, allowing the characteristics of the landscape to dominate.

- 9.9 At two-storeys in height, and with a more complex roof form, the replacement dwelling proposed would have a much more significant visual presence. Along with the refurbished annexe, it would be seen from the confines of the golf course, from parts of the permissive footpath, and from the first tee of the golf links, in particular.
- 9.10 The architectural qualities of the dwellings in the row that stretches east from the Saunton Sands car park vary. There are some attractive, traditional dwellings that despite their architectural sources, a matter referred to below, sit comfortably in their context. Other, more modern interventions have been less successful in that respect.
- 9.11 It is important to appreciate that the AONB, Heritage Coast, and Coastal Preservation Area are designated because of the quality of their landscape. The development plan and the Framework stress the importance of the natural characteristics of the landscape.
- 9.12 In that overall context, while the Council raises no issue in this regard, the principle of increasing the size of any replacement dwelling on the site, and thereby its visible presence as a man-made incursion into the landscape, must be questioned. Having said that, as a general principle, the visible presence of a well-designed dwelling in the landscape need not necessarily harm the character and appearance of the area.
- 9.13 In very simple terms, the approach taken to the design of the replacement dwelling **is to adopt a 'butterfly' plan form and an architectural treatment** inspired by the works of Edwin Lutyens. Local residents raised issues about the sense of this approach but **'Knockbeg', a house** in the vicinity, that I saw during my site visit, has a **'butterfly' plan form** and, as set out in the DAS, there are others in the area. Lutyens worked locally too and I saw Saunton Court, a Grade II* listed building, which is nearby, in the course of my site visit. On top of that, as described in the DAS, Lutyens himself did use the **'butterfly' plan form, in particular at Papillon Hall** in Leicestershire.
- 9.14 More important, given that **Lutyens' work at Saunton Court** involved the refurbishment of a much older building, is the distinctive local vernacular. This is redolent of that of the home-counties, largely as a consequence of the architects chosen by the Estate that controlled the land, and its development, in the early 20th Century. This is the vernacular that provided the source for **Lutyens' work in that idiom, and as such, a new dwelling, reflective of that part of Lutyens' oeuvre,** would not necessarily look out of place in the area.
- 9.15 **However, Lutyens' architecture** is widely acknowledged to be at the higher end of the scale of architectural sophistication. While there are pleasing elements in the design of the dwelling proposed, like the juxtaposition of the two-storey bay window and the tall chimney, there are other elements of the design that are not so successful. The translation of the **relatively complex 'butterfly' plan form** into a coherent roofscape is invariably a challenge. At Papillon Hall, Lutyens dealt with that challenge by maintaining a geometric discipline in the plan-form, and a consistent eaves and ridge height.
- 9.16 The plan form of the dwelling proposed would not have that discipline. The eaves and ridge heights would vary and the result would be an incoherent, over-complicated, roof form, and some very difficult junctions. This would be

particularly evident in the way the angled west wing, with its lower eaves and ridge, would collide with the main roof and the lower element of the tall chimney. Much the same would occur at the junction between the east wing and the main roof.

- 9.17 I asked specific questions of the scheme Architect on this matter at the Hearing and note what was said about the manner in which these junctions could be resolved at detailed design stage. To my mind, however, this is a fundamental design issue that needs to be resolved at the conceptual stage. Dealing with such difficult junctions at detailed design stage would not be **possible in a way that properly reflected the scheme's architectural sources**. Put simply, **in a scheme respectful of Lutyens' approach to design, such difficult junctions would not arise in the first place**.
- 9.18 On top of that, there is the annexe to consider and, again, this matter was discussed at the Hearing. While some work is proposed to it, the result would still be a building of suburban appearance, with a different architectural treatment to the new, parent dwelling proposed. The observer would see a main house, with touches of Lutyens, sat alongside an annexe, with no architectural linkage to it. The result would be a jarring and visually confusing juxtaposition. **One of the many qualities of Lutyens' domestic work is the unified approach to the design of house, garden and outbuildings**. Given the origins of the design approach, the lack of that unity here would be a significant omission.
- 9.19 Visibility of the new dwelling proposed, and the annexe, would be limited. However, good design is an intrinsic quality and a relative lack of visibility is no good reason to support an unsatisfactory design. Notwithstanding that, there can be no doubt that the replacement dwelling proposed would be more **visible than 'Brackens'**. From the first tee of the golf links, and other places along the permissive footpath, the new dwelling, with the design difficulties I have identified, and its unhappy relationship with the refurbished annexe, would be clearly visible in the landscape.
- 9.20 **Taking all those points together, while 'Brackens' has little in the way of architectural quality, it is, at least, unobtrusive**. The increased visual presence of the proposal, coupled with unresolved aspects of the design of the house, and the relationship it would have with the annexe, mean that it would appear much more strident, and incongruous, in its context.
- 9.21 As a consequence of that, the proposal would cause significant harm to the character and appearance of the AONB, Heritage Coast, and Coastal Protection Area. Flowing from that conclusion, the proposal fails to accord with LP Policies DVS1, ENV1, ENV2, and ENV3. Neither would it conform with the approach of the Framework to design, and protected, or valued, landscapes.

Living Conditions

- 9.22 Points have been made about the visual impact of the proposal on residents of **'The Dunes' and beyond that 'Surf'**. However, the degree of separation would be such that the new dwelling would not appear domineering.
- 9.23 Moreover, any potential overlooking, from bedroom 4 of the new dwelling in particular, could be controlled by a condition dealing with the design of the

west-facing window concerned. As such, the proposal would comply with LP Policy DVS3 and the approach of the Framework to this matter.

Other Matters

- 9.24 Subject to a condition to secure the works of mitigation set out in the Protected Species Survey the Council is content that there would be no undue impact on protected species or their habitats. Bearing in mind that Natural England raises no objection to the proposal, I see no reason to disagree with that analysis. The proposal would comply with LP Policies ENV9, ENV10 and ENV11 and the approach of the Framework; paragraph 118 in particular.
- 9.25 In terms of traffic and parking, the Council and the Highway Authority are content that the alterations to the access proposed and the additional parking and turning areas proposed would not lead to concerns in highway safety terms. I agree; the proposal complies with LP Policies TRA6 and TRA8 and the approach of paragraph 32 of the Framework in this regard.

Conclusion

- 9.26 The proposal would be acceptable in terms of its impact on biodiversity, highway safety, and the living conditions of neighbouring residents. Subject to suitable conditions, and existing controls, it would not lead to an unacceptable degree of risk in terms of the potential spread of termites.
- 9.27 However, the proposal would have a significantly detrimental effect on the AONB, Heritage Coast and Coastal Protection Area. This brings it into conflict with the development plan, and the Framework, and, in my judgement, provides a compelling reason for the refusal of planning permission.

Conditions

- 9.28 Should the SoS disagree with that conclusion and decide that planning permission should be granted for the development proposed, I have considered the suggested conditions¹⁴ in the light of advice in Circular 11/95¹⁵, and advice in the Framework. The results of that consideration are set out in Annex A to this Report.
- 9.29 A commencement condition would be required and, in order to facilitate any subsequent application for a minor material amendment, another condition is required setting out the approved plans. It would be necessary to control external materials through the submission of samples but there is no need to specify in the condition that these should be termite resistant. If for whatever reason samples are submitted that are not, then the local planning authority need not endorse their use.
- 9.30 Linked to that, and given the nature of the design proposed, a condition is necessary to secure details of important aspects of the new house proposed. Otherwise, there is a danger that the promise in the Lutyens-inspired design would not be translated into reality. Such a condition was not proposed by the Council but no objection was raised on behalf of the applicant to my

¹⁴ Attached to the SoCG

¹⁵ Circular 11/95: *The Use of Conditions in Planning Permissions*

suggestion. In order to protect the integrity of the design, and the wider area, a condition is also necessary to remove certain permitted development rights.

- 9.31 As set out, a condition would be necessary to deal with the potential overlooking of the adjoining property from first floor windows serving bedroom 4. However, I agree with the view expressed on behalf of the applicant that such a condition should allow for a scheme to be submitted for approval as this provides for more flexibility than a specification that obscure glazing should be used and retained, as suggested by the Council.
- 9.32 The Council suggests a condition to secure protection of trees on the appeal site for the duration of the construction period and beyond that, for the life of the development, with any that are subsequently removed, die, or become damaged or diseased, replaced by a tree of similar species. These trees are positive contributors to the character and appearance of the wider area so it would be necessary to protect them from any damage that might occur during the construction period. However, if the Council thinks them so important that it wishes to secure protection, and replacement, beyond that, it would be open to them to instigate Tree Preservation Orders¹⁶. In that context, the suggested requirement for protection beyond the construction period is unreasonable. It is also necessary to apply a condition to secure the works required to mitigate any impact on protected species.
- 9.33 To address issues around termites, the Council suggest two conditions. The first requires removal of any material from the site to accord with the Forestry Commission Restriction of Movement Order but given the existing presence of the Order, such a condition would merely replicate provisions already in place under other legislation. It cannot be said to be necessary, therefore.
- 9.34 The second condition suggested requires at least two members of the termite monitoring team of the **UK Government's Termite Eradication Programme** to be present during the demolition of 'Brackens' to inspect timbers as they are removed. That seems to me a reasonable precaution given the risk of termite spread but, as discussed during the proceedings, it would be more precise to apply a condition requiring a method statement to be submitted and approved, to cover both demolition and construction periods, which can deal with the need for members of the termite monitoring team to be present. Such a method statement could also deal with the disposal of timber, and other material, from 'Brackens', whether or not termites are found within them.
- 9.35 A point was raised on behalf of the applicant that requiring members of the termite monitoring team to be present during the works would be an onerous requirement should funding decisions by the Government place the burden of cost upon the applicant. It is not within the remit of the SoS in determining a planning application to have regard to such funding decisions or eventualities. If the demolition of 'Brackens' and the construction of the new dwelling and associated works are to proceed, it is imperative that all this takes place under expert supervision. Given the potential for termites to spread as a result of those activities, it would be reckless in the extreme to do otherwise.

¹⁶ Referred to hereafter as TPOs

- 9.36 In that context, while the Government may take the view that continued funding of the UK Termite Eradication Programme should continue, if it does not, there seems no other way to proceed than to expect the applicant, who would, after all, be the beneficiary of any grant of planning permission, to meet the costs involved in securing the presence of those experts.
- 9.37 The method statement can also deal with how any soil disturbed as part of the construction process is dealt with. Soil disturbance represents a threat in terms of the potential spread of termites but this risk could be managed, to an extent, by a foundation design for the new dwelling that requires minimum excavation - a raft foundation was suggested as one way forward. In that context, it would be reasonable for a condition to be applied to require approval of the foundation design for the new dwelling.

10. Recommendation

- 10.1 The application be refused.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE APPLICANT:

John Woodward	Woodward Smith Chartered Architects
Dipl.Arch Dipl.UD RIBA	
Alastair Green	Woodward Smith Chartered Architects
BA(Hons) Dip.Arch RIBA	
David Morgan	
BSc FRES	

FOR THE LOCAL PLANNING AUTHORITY:

Adrian Devereaux	Senior Planning Officer
BSc DipT&CP MRTPI	North Devon District Council

FOR THE BUILDING RESEARCH ESTABLISHMENT:

Dr Robert Verkerk	ANH Consultancy Ltd
MSc PhD	
Dr Ed Suttie	BRE
PhD	

INTERESTED PERSONS:

David Griffiths	Local Resident
Dr Mary Griffiths	Local Resident
PhD (Cantab)	
Sarah Farrelly	Local Resident
Patrick Farrelly ¹⁷	Local Resident
Roger Abbott	Local Resident

DOCUMENTS

- 1 Submissions of Roger Abbott
- 2 Submissions of Sarah Farrelly

PLANS

- A T218 11 01A: Site Location Plan
- B T218 11 02B: Block Plan
- C T218 11 05A: Site Plan (as existing)
- D T218 11 10A: Annex (as existing)
- E T218 11 20C: Site Plan (as proposed)
- F T218 11 21F: Contextual South Elevation
- G T218 11 25B: Annex (as proposed)
- H T218 11 30K: Floor Plans and Section (as proposed)
- I T218 11 31K: Elevations (as proposed)

¹⁷ Took part in the accompanied site visit

Annex A: Suggested Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: T218 11 01A: Site Location Plan; T218 11 02B: Block Plan; T218 11 05A: Site Plan (as existing); T218 11 10A: Annex (as existing); T218 11 20C: Site Plan (as proposed); T218 11 21F: Contextual South Elevation; T218 11 25B: Annex (as proposed); T218 11 30K: Floor Plans and Section (as proposed); and T218 11 31K: Elevations (as proposed).
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the new dwelling and the refurbished annexe hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 4) No development shall take place until details of windows, external doors, the chimney, roof eaves, verge, ridge, hips, dormers, that form part of the new dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development that would otherwise be permitted by Classes A, B, C, D, E, F of Schedule 2 Part 1 or Class A of Schedule 2 Part 2 shall be carried out.
- 6) No development shall take place until details of the glazing and opening mechanism of the first floor windows, in the west elevation, serving bedroom 4, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 7) No development shall take place until details of measures to protect the existing trees on the site during the construction period, broadly in accordance with the arboricultural constraints report produced by JP Associates dated March 2012, have been submitted to and approved in writing by the local planning authority. The approved protection measures shall be retained for the duration of the construction period.
- 8) The demolition of 'Brackens' shall not take place until the mitigation measures set out in the Protected Species Survey of Buildings and Bat Emergence Survey, report no.12/1850, carried out by Devon Wildlife Consultants in September 2012, have been completed.
- 9) No development shall take place until a method statement, covering the demolition and construction stages of the development permitted herein, and in particular provisions for the removal and disposal of timber, any soil movement, and supervision by members of the termite monitoring team of **the UK Government's Termite Eradication programme, have been** submitted to and approved in writing by the local planning authority. Demolition and construction shall be carried out in accordance with the approved method statement.

- 10) No development shall take place until details of the foundations to the new dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.