

12 April 2016

Luxulyan Parish Council and Luxulyan Community Land Trust

Land adjacent St Cyriac, Luxulyan, Cornwall

PA15/08298 – Remove / Vary Section 106 – Not BA

Re: Application to Appeal the LPA decision

We are concerned that within the Agents Statement it is noted the comments of Luxulyan Parish Council concerning this Rural Exception site are only views and have no supporting evidence. We confirm our concerns below and would offer to provide any copies of documents referred to, if the Inspector so requires.

1. The documents relating to the three purchasers are well known to the Developer and it is surprising that the Agent has not been advised of this. We will be quite happy to provide copies if the Inspector should wish to see them. When these deposits were returned when the developer abandoned the project, it caused great disappointment and hardship. It should be noted that in the last 12 months two of the built affordable units have been offered for resale and eligible buyers with mortgage offers have not been a problem.
2. In respect of proposals to change the criteria to allow rented accommodation in these remaining units, it should be remembered that an option existed in the original mix options for Plots 1-4 to be rented. However this option was rejected in favour of all affordable units being sold in accordance with the S106.
3. Similarly, Plots 11-13, open market value homes, were never built in accordance with the S106 agreement. They were sold as building plots. When the possible impact on the viability was questioned the developer assured Luxulyan PC and the CLT it would not cause any problem and allow them to complete the scheme with less risk. These plots were advertised and sold on the fact that there was no neighbouring rented accommodation in this development. Documentary evidence of these matters can be provided if needed.
4. The land for Plots 14-16 was transferred by members of the Oliver family to Rural Foundations C.I.C. in 2012. The Land Registry form TP1 for this transfer states the consideration is not for money. The consideration is that the Transferee, Rural Foundations C.I.C. carries out all matters set out in a contract dated 03.11.2009 made between members of the Oliver family and Quay Developments (Luxulyan) Ltd. This contract states the conditions the Oliver family require in order to agree to the planning consent under application 08/01792 and S 106 agreement dated 23/11/2009.

To the best of our knowledge the conditions of this agreement are still to be met. Other conditions require the Transferee to erect and maintain stockproof fence to this land and comply with various covenants including 1.6.2 "transferee and successors will observe and perform covenants and restrictions contained in planning obligation agreement dated

23.11.2009". This obviously includes the requirement to complete in 5 years or pass the scheme to Cornwall Council for completion.

It is understood these no agreement to vary these matters has been approved by the Oliver family and these contracts would probably be severely compromised if this Appeal is approved.

5. The roadworks required are incomplete, even though 16 properties have been constructed and occupied since as early as February, 2012. The Section 38 deed of agreement for this was in the name of Rural Foundations C.I.C. but was never executed. We are concerned that this may eventually become an expense to burden either the Cornwall council tax payer or the owners of the properties on this development.

Planning Consent 08/01791 identifies a need to divert an existing public right of way, which may also be part of the Section 38 road works requirements. This is currently incomplete and we also have concerns about the work done so far, together with any mitigation measures recommended in the Habitat Survey of 2008.

6. Since the developers withdrew from this site in 2012 the remaining areas have been in a state of neglect and an eyesore to all who live near or visit. This is particularly to the frontage of plots 11, 12 and 13 and east of plot 17. A dangerously incomplete manhole was found in the area within plots 14 and 15 by the current owners of plot 17 and made safe at their own expense.

7. The Rural Exception status should have merit, as the applicant's agent appears to recognise by choosing the grounds for the application very carefully. The document *Section 106 affordable housing requirements. Review and Appeal* (Department for Communities and Local Government, April 2013) states on page 5:

5. Affordable housing obligations on sites granted in accordance with a Rural Exceptions Site policy are exempt from this procedure. Where the affordable housing obligation is linked to a planning permission which was granted in accordance with a rural exception policy, an application under Section 106BA or appeal under Section 106BC cannot be made.

This, presumably, is why the applicant's agent stipulates 'NOT BA' under 'Further information' on the planning website. The Application Type is to: 'Remove/Vary Section 106 - NOT BA'. So they appear to recognise the potential of the Rural Exception case and are seeking to sidestep it. However, by demonstrating it was integral to the decision by both councils to support this scheme, promoted by the local community on land offered without cost for this sole purpose by a member of that community, it shows to an inspector the objectives that were being pursued originally. Furthermore, it is still valid insofar as that demand for affordable housing under the original tenure, and to be delivered quickly, still apply.