

RESPONSE BY LUXULYAN PARISH COUNCIL TO APP/D0840/W/16/3145679

Re. Appeal by Mr Nick Witcomb against Cornwall Council's refusal of PA15/05168 | Outline application with some matters reserved for construction of 4no. two bedroom houses | Beswetherick Field Luxulyan Bodmin Cornwall PL30 5FB

Luxulyan Parish Council wishes to reiterate its original objections to this application made on 29th July 2015 (see below) and to add more detailed reasons to support its view that this appeal should not be allowed.

OBJECTION MADE BY LUXULYAN PARISH COUNCIL TO PA15/05168, 29TH July 2015

The applicant is the original developer of the land to which the 'matters reserved' refers, C2/08/01791. Luxulyan Parish Council OBJECTS strongly and unanimously to this application because 1) the streets do not have street lights (in breach of condition 5 of the original decision); 2) the road is not adopted by Cornwall Council (in breach of condition 7 of the original decision); 3) the Public Footpath crossing the property has not been properly repositioned and reinstated (in breach of informative No4 of the original decision). 4) Most importantly, the original application was supported by Luxulyan Parish and granted on the grounds that 13 affordable dwellings would be built and be made available to the Community Land Trust (CLT). Only 10 affordable dwellings have been built; thus, any further development should be affordable and sold or rented under the guidelines of the CLT. -- Taking all the above in to consideration, the applicant's request that the current application be considered as a 'new chapter in the planning history of the site' is disingenuous. And finally, 5) Luxulyan Parish Council requests that the veracity of his claim that the previous scheme was 'financially unviable' be independently verified.

LUXULYAN PARISH COUNCIL: COMMENTS REGARDING APP/D0840/W/16/3145679

1. In point 1.2 of the Appeal Statement, the developer's agent states that the original scheme was not completed because it was 'financially unviable'. Luxulyan Parish Council still awaits independent verification of this statement. Furthermore, it has reason to contest it. At a meeting of Luxulyan Parish Council held on 24th April 2012, the developer asked to sell 3 properties intended to be affordable at open-market rates. According to the minutes, 'they would not make a loss on the whole site' (page 2). Later on, councillors asked if the developers could finish the development: 'Was funding in place to finish development – Yes' (page 2). This appears to show that the developers believed completion to be financially viable. The Chairman then read out an email from a senior development officer at Cornwall Council which stated that: 'The 3 un-built affordable plots are estimated to cost approx £230k to build, and can be sold as affordable for £310, 500. They (the developers) would therefore make a £80, 500 profit on these if they were to build them, which will see them cover their total scheme costs and make approx £42, 805 return from the scheme as a whole. There is therefore an incentive for them to build these 3 units rather than walk away without building them' (Luxulyan Parish Council minutes 24th April 2012, page 3). The officer went on to say that: 'The additional revenue [i.e. from building these properties as open-market not affordable homes] is also not needed to cover any losses, as they have already covered their costs, so there is no risk of the developer going under' (Luxulyan Parish Council

minutes, 24th April 2012, page 3). As a consequence, Luxulyan Parish Council resolved that it could not agree with the request to reduce the number of affordable houses built.

2. That this, allegedly, did not come about was due in part to the decision of the developer to sell the first 3 open-market plots as plots, rather than building them for sale. This was the decision of the developer. The understanding of Luxulyan Parish Council is also that the value of the affordable housing that has been completed rose before sale, suggesting that financial viability increased. If non-viability is the reason why the development was not completed it has come about through the fault of the developer.
3. This scheme was initiated by the community, rather than by the developer, so cannot be judged by the criteria that were used in the West Berkshire judgement, which in any case, does not have the same status in planning decisions as case-law has in the courts. Often a developer buys land, applies to build and accepts some provision of affordable units as a condition of approval. This case is different. The parish council, supported by Restormel Borough Council, identified a need for affordable housing. A parishioner gave the land for this purpose and the developer was offered the opportunity to develop the site under a S106 agreement. The establishment of a Community Land Trust was a requirement for the scheme to go ahead. This site is a Rural Exception Site that had not been identified for building. The developer implies that being refused permission for 3 more open-market houses is making his development non-viable; in fact it is a community project, supervised by a CLT and initiated by the local councils to meet a specific need on an exception site, and it is the action of the developer that is making this community scheme non-viable. These terms were clearly stated and accepted at the time by all parties.
4. The agent notes in 2.3 of the Appeal Statement that the examination of the Cornwall Local Plan is currently suspended and asserts that one reason is the 'failure to identify enough housing land'. That is not germane to this appeal.
5. The Inspector's *Preliminary Findings Following the Hearings in May 2015* (Appendix 1 to the Appeal Statement) does, however, acknowledge the importance of the Rural Exception Sites policy in delivering affordable housing 'in smaller towns, villages and hamlets' (5.14 *Preliminary Findings*) and recommends that Policy 9 of the Cornwall Local Plan should be worded to make it clear that it is in line with NPPF. This appeal would work against the implementation of this policy on this site. Interestingly, the Inspector notes elsewhere the failure of developers to deliver under S106: 'A number of the sites in the table were granted outline planning permission a few years ago and have not progressed. Thus what was secured in S106 agreements has not all been delivered' (5.8 *Preliminary Findings*). This is the situation at Beswetherick Fields.
6. The agent refers to the possibility of new laws, rules and policies in the future (see Grounds 3.1 and 3.8). This is inadmissible since it based on speculation of what conditions may apply at some unspecified time in the future.

7. In Grounds 3.3 and 3.3 [sic] the agent challenges the definition of the site as being countryside, or isolated, possibly as a means of arguing that it should not be considered as a Rural Exceptions site. This site was authorised for housing, and developed so far, on the assumption that it was a Rural Exceptions site. No developer would have been able to build here under normal circumstances. Altering the definition of the site retrospectively would not only be unfair, it is also illogical, given that most of the properties planned have been built.

8. Grounds 3.5 and 3.6 refer to the requirement of the local planning authority to have an accurate understanding of housing needs, both affordable and open-market, and to plan accordingly. The agent seems to wish to challenge the Cornwall Local Plan in general but fails to deal with the specific housing needs, not only within the St Blazey, Fowey and Lostwithiel Community Network Area (CNA) but, more pertinently, in Luxulyan Parish itself. The Cornwall Local Development Framework *Planning Future Cornwall Growth Factors: St Blazey, Fowey and Lostwithiel Network Area* (Cornwall Council, Version 2, February 2013) notes that '60 affordable homes are required each year to meet need – 0.76% of household compared to 0.65% across Cornwall' (*Section 1: Policy Objectives Housing Need: Key Facts*). This clearly establishes a strong local need for affordable housing. Even more important is the evidence produced within the parish of the need for affordable homes. One piece of evidence is the Luxulyan Parish Plan (January 2005) from which the following extracts are taken:

On page 11

Affordable Housing – The need for housing highlighted by the community consultation process is in line with the Restormel Community strategy and “Options Report for the Review of the Local Plan” in which the need for affordable housing was identified. A previous development in the parish met with some opposition as it varied dramatically from the affordable homes development that was originally planned and it is therefore important that the Parish Council and community are consulted and kept informed of proposals for the parish.

The document includes these comments made by members of the public during the consultation:

“Low cost housing is needed desperately for local families only. Developers should be made to include a greater proportion of affordable homes in any development – no agreement, no planning permission given. They make enough profit with rising house prices to afford to comply.”

“If any (housing development), homes should be provided for first time buyers – as many local people have to move away.”

“First time housing.”

At the bottom of page 11, under *Policies-Strategies*, it quotes from Restormel Borough Council's Local Plan, Policy R29 Affordable Housing:

The target for affordable housing for the period 1994-2011 is 15 dwellings out of 275 for the rural sub-area. The Council will seek to provide about two thirds of these on exception sites negotiated under Policy 75 with the rest being negotiated on sites which already have planning consent.

On page 30 is a statement of intent to provide affordable housing within the parish:

ISSUE	ACTION	LOCATIONS	PARTNERS
To provide an adequate supply of affordable homes for a range of people within the community (e.g. local residents in housing need, first time buyers & young people and families).	Establish and monitor the need for low cost housing of all tenures via the borough and local needs housing surveys and registers.... ...Work with housing associations to explore the possibility of funding	Generally within the parish – specific sites not yet identified	<ul style="list-style-type: none"> • Parish Council • Restormel Borough Council: housing enabling, legal and planning departments • Housing Corporation • Local landowners • CRSS – Rural Housing Enabler • Housing Providers: Housing Associations, Private Developers • Local residents

The Parish Plan provides specific, verifiable evidence of local need. Indeed it marks the start of the process leading to the provision of land, the creation of the S106 agreement and the donation of land. The CLT and Parish Council can also provide evidence of local people who have shown interest in affordable homes within the Beswetherick Fields development, some of whose needs have not been met because of the developer's failure to complete.

9. In Ground 3.7, the agent notes that the provision of market housing will indirectly contribute to meeting all housing need. This is a generalised and somewhat trite remark. Luxulyan Parish has a specific, identified need for affordable, not open-market, homes. Building the latter is a speculative act, likely to tap into demand beyond the parish. The whole rationale of this development, which was initiated by the community, not the developer, was to provide affordable accommodation for local people who could not afford to buy on the open market. Within this locality, building open-market homes would not alleviate need.
10. Luxulyan Parish Council shares the concerns expressed by the CLT and local residents about the capacity of the developer to complete the properties, roadworks, drainage, public footpath modification and general appearance of the site according to the original plans. Eleven public comments expressing concerns about the site were made in opposition to

PA15/05168 in 2015. More recently, residents' concerns about the quality of some of the fittings of the finished affordable housing have been raised at Luxulyan Parish Council (Minutes 10th March 2016 15/226 Parish Matters, item I). As a result it was agreed that Luxulyan Parish Council should write to the CLT and Cornwall Council. As a consequence, there is no confidence in the developer to complete the scheme as originally agreed to a satisfactory standard or within a reasonable timeframe. Luxulyan Parish Council wishes Cornwall Council to take over the development, as provided for in the original S106 agreement, in order to provide much-needed affordable dwellings.

11. In conclusion, Luxulyan Parish Council strongly opposes the appeal. The development of this Rural Exception Site was in response to its Parish Plan and was in line with the evidence-based policies of Restormel Borough Council, later Cornwall Council. It was initiated locally to provide mainly affordable homes to meet local need, not by a developer providing a quota of affordable homes as a condition for building mostly speculative open-market homes. The developer was brought into the scheme by the CLT; therefore, it is inappropriate for the developer to be seeking to alter the terms of the original S106 agreement. The 3 plots would help towards meeting an identified local need. Luxulyan Parish Council has no confidence in the capacity of the developer to: meet the terms of the S106 agreement; complete the houses satisfactorily (given complaints from some current residents); or complete the development of the site as a whole. It requests that the appeal be rejected so that Cornwall Council can fulfil the aim of the scheme, namely to provide affordable homes for local people.