

---

## Appeal Decision

Hearing held on 16 February 2016

Site visit made on 16 February 2016

**by M J Whitehead LLB BSc(Hons) CEng MICE**

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

**Decision date: 25/02/2016**

---

**Appeal Ref: APP/D0840/W/15/3030407**

**Higher Newham Farm, Truro, Cornwall TR1 2SN**

- 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 Living Villages (Newham Farm) Ltd against the decision of Cornwall Council.
  - The application Ref PA14/07792, received by the Council on 15 August 2014 and validated on 19 August 2016, was refused by notice dated 19 December 2014.
  - The development proposed is a sustainable new community farm and village.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a sustainable new community farm and village at Higher Newham Farm, Truro, Cornwall TR1 2SN in accordance with the terms of the application, Ref PA14/07792, received by the Council on 15 August 2014 and validated on 19 August 2016, subject to the conditions in the attached schedule.

### Procedural and Preliminary Matters

2. The application was submitted in outline form with all matters of detail reserved for subsequent consideration. The full description of the proposed development given on the application is as above and comprising the following uses:
    - Community farm run as an educational facility offering land based accredited agricultural courses with livestock grazing and horticultural uses (including associated agricultural / horticultural / education building provision of up to 1400 sqm gross floor area);
    - Horticultural land parcel (including building provision of up to 3500 sqm gross floor area);
    - Growing area for community and educational usage comprising orchards, woodlands and allotments;
    - Village housing comprising up to 155 dwellings (C3 use) and associated parking, internal roads, landscaping and recycling centre;
    - Community hub consisting of renovated farm buildings and new build premises:
      - Restaurant, ancillary spaces and produce sales (A3 use of up to 260 sqm and A1 use of up to 15 sqm gross floor area),
      - Cook school (D1 use of up to 120 sqm gross floor area),
      - Small scale shops (A1 uses of up to 95 sqm gross floor area),
-

- Workshops / studio / gallery / office (B2/D1 uses up to 300 sqm gross floor area),
- Holiday let and Course Accommodation (C2 and C3 uses up to 300 sqm gross floor area);
- Vehicular access from A39 and pedestrian / cycle links to Higher Newham Lane, Morlaix Avenue and former railway track;
- Associated foul and surface water infrastructure and public open space including equipped play; and
- Demolition of the 'White Cottage' and associated outbuildings.

Although the application refers to access from the A39, the plans and details indicate that the access would be from the A390 Morlaix Avenue. Also, the declaration on the application form was not dated. I have therefore determined the appeal on the above basis with the proposed access from the A390 Morlaix Avenue and have referred to the dates on which the Council has indicated that it received and validated the application.

3. Although the Council submitted details of an application for costs at the hearing, it decided not pursue that application prior to the close of the hearing.
4. The Council resolved at its Strategic Planning Committee on 22 October 2015 to approve an application Ref PA15/05584 for outline planning permission for the same development as this appeal development, except for access not being a reserved matter. This approval was subject to the completion of a S106 Agreement and/or S278 Agreement to secure financial contributions towards off-site transport infrastructure improvements, education facilities and public open space for outdoor sport; the delivery of affordable housing, new public open space and green infrastructure improvements and a new community farm; compliance with a travel plan, air quality monitoring, sustainable urban drainage and reduced energy use for new buildings. At the time of the hearing, no such Agreement(s) had been completed. I have taken this into account in my determination of the appeal.
5. The Council has accepted that it cannot currently demonstrate a 5 year supply of deliverable housing sites as required by the National Planning Policy Framework (Framework). As such, relevant policies for the supply of housing are not to be considered up-to-date, in accordance with paragraph 49 of the Framework. A presumption in favour of sustainable development should apply to the proposed development in accordance with paragraph 14 of the Framework. In the context of the relevant policies being out-of-date, the test in this appeal is therefore whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, as no specific policies in the Framework would indicate development should be prevented here. This is the basis on which I have determined the appeal.

## **Main Issues**

6. Based on the reason for refusal, a main issue is the effect of the proposal on highway and pedestrian safety, with particular regard to the proposed access onto, and pedestrians crossing, the A390 Morlaix Avenue. Another main issue is the effect of the proposal on the provision of affordable housing, open space and education facilities, air quality and the flow of traffic in the area.

## **Reasons**

### ***Highway and Pedestrian Safety***

7. The appellant has submitted details of a junction arrangement for the proposed access onto the A390 Morlaix Avenue on Plan No 1203-80-PL111 A, and an updated Revision B has since been provided. The Council accepted at the hearing that the junction proposal would address its reason for refusal regarding highway and pedestrian safety. I understand that the details on the plan are similar to those submitted with the application Ref PA15/05584, which the Council's Strategic Planning Committee resolved to approve. Furthermore, the Council has indicated that it will reduce the speed limit on that stretch of Morlaix Avenue from 70 mph to 50 mph, and possibly implement a further reduction at the site of the proposed junction to 40 mph associated with junction improvements at the nearby roundabout with Falmouth Road.
8. Based on the above, and my observations at the site visit, I find that the proposal would not have a severe residual cumulative impact on highway and pedestrian safety. I therefore conclude on this main issue that the proposal would accord with Carrick District Wide Local Plan 1998 Policy 13L, as it would not create an unacceptable impact on the overall highway network, and paragraphs 9 and 32 of the Framework in respect of this issue.

### ***Affordable housing, open space and education facilities, air quality and the flow of traffic in the area***

9. Following the close of the hearing, an engrossed S106 Agreement and engrossed S278 Agreement have been provided. The S106 Agreement would secure the provision of affordable housing and other facilities; and contributions towards education, the provision and maintenance of public open space and air quality monitoring. The S278 Agreement would secure the payment of a contribution towards highway improvement works in the area, including improvements to the nearby cycle route and associated speed reduction measures made necessary by the proposal.
10. The planning obligations in the S106 Agreement have to meet the tests in Community Infrastructure Levy Regulations (CIL) Regulation 122 in order for them to be taken into account in my determination of this appeal. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. CIL Regulation 123 (3) indicates that a planning obligation may not constitute a reason for granting planning permission to the extent that five or more separate planning obligations that relate to planning permissions granted for development within the area of the charging authority and which provide for the funding or provision of that project or type of infrastructure have been previously entered into.
11. The S106 Agreement would secure at least 17.5 % of the houses to be provided as being affordable and would ensure that a financial contribution would be made towards off-site provision that would be acceptable to the Council. I am satisfied that the planning obligations to secure the on-site provision and financial contribution would be necessary to ensure compliance with policies BHM1 and BHM2 of Carrick Balancing Housing Markets Development Plan Document 2008, particularly given the acknowledged need

- for affordable housing in the district. Therefore, I find that the planning obligations regarding affordable housing meet the tests in CIL Regulation 122.
12. The contribution towards education through a planning obligation would be directed to new accommodation or internal modifications at Kea School. The Council's Children's Services Local Authority has identified in September 2014 that Kea School is the designated primary school for the development and that it is virtually at capacity. The financial contribution would therefore help to address the shortfall in educational facilities to meet the demands from new development identified in the Council's document: Cornwall Infrastructure Needs Assessment, March 2014 and would be in accordance with the Council's Guidance on Section 106 Planning Obligations for Education Provision, April 2012. As such, I am satisfied that the planning obligation to secure an education contribution meets the tests in CIL Regulation 122.
  13. The contributions by way of planning obligations towards the maintenance of public open space that would be provided on-site and improvements enabling increased capacity and community use of sports pitches at Penair School playing fields have been shown to be necessary to meet the additional demand as a result of the proposed development in accordance with the Council's Open Space Strategy for Larger Towns in Cornwall interim planning guidance. I therefore find that the planning obligations to secure financial contributions towards the provision and maintenance of public open space meet the tests in CIL Regulation 122.
  14. With regard to air quality monitoring, the Council provided at the hearing a plan showing that the appeal site is within a designated 'Air Quality Management Area'. As the proposal would generate additional vehicle movements in the area, it would be necessary to monitor the air quality to assist with its management. I am therefore satisfied that a planning obligation to secure a financial contribution towards the purchase, installation and operation of air quality monitoring equipment would meet the tests in CIL Regulations 122 and 123(3).
  15. The evidence provided has demonstrated that the obligations to secure the provision and implementation of community facilities, a travel plan and a sustainable drainage system, together with its maintenance, are necessary to make the development acceptable in planning terms. The obligation to secure an enabling activity fee is necessary as the first instalment of the affordable housing contribution to enable the Council to provide affordable housing on alternative sites to the appeal site.
  16. In terms of CIL Regulation 123(3), the Council provided at the hearing details of previous contributions that have been made through planning obligations towards Kea School and public open space in the area. These details demonstrate that the planning obligations to secure education contributions towards Kea School and contributions towards public open space would satisfy CIL Regulation 123(3).
  17. Based on the above, I have found that the planning obligations in the S106 Agreement meet the tests in CIL Regulations 122 and 123(3) and paragraph 204 of the Framework. I have therefore taken them into account in my determination of this appeal. The planning obligations would ensure that the proposal would not have an adverse effect on the provision of affordable housing, open space and education facilities and air quality in the area and the

highway agreement would ensure that it would not have a severe adverse effect on the free flow of traffic in the area.

### **Overall Conclusions**

18. For the reasons give above, and taking account of the S106 Agreement and S278 Agreement, I find that the adverse impacts of the proposal, including its effect on highway and pedestrian safety, affordable housing, local facilities and infrastructure and the flow of traffic, would not be sufficient to significantly and demonstrably outweigh the benefits of the proposal and that it would represent sustainable development in accordance with the Framework. Therefore, having regard to all relevant matters raised, I conclude that the appeal should succeed.

### **Conditions**

19. Following discussions at the hearing regarding the conditions included in the recommendations by the Council's Officer in the Committee Report, I have included the standard time conditions for approval of reserved matters and commencement of development to comply with the legal requirements. I am satisfied that a condition to ensure compliance with the principles given on the plans and details submitted with the appeal application is necessary to provide certainty.
20. A condition to ensure compliance with an approved Environmental Construction and Management Plan is necessary to minimise the environmental impacts of the construction process for local residents and users of the adjacent highway network, prevent pollution of the water environment and protect wildlife. As I have included in this condition controls over the hours of deliveries and working, the management of dust, the disposal of surface water run-off, access, parking and storage during construction, separate conditions dealing with these matters are unnecessary.
21. A condition regarding contamination is necessary in the interests of health and safety and the environment. A condition to ensure that trees to be retained would be adequately protected is necessary to prevent unacceptable harm to the character and appearance of the area. A condition to ensure the provision of an acceptable layout for the access to the development is necessary to protect highway safety, taking account of the reason for refusal.
22. A condition to ensure that power lines would generally be sited underground is necessary to protect the character and appearance of the surrounding area. Conditions to control the removal of vegetation and to ensure compliance with recommendations in an Ecological Assessment are necessary to protect local wildlife. A condition to ensure that there is compliance with an archaeological mitigation strategy is necessary in the interests of local heritage. I am satisfied that all these conditions are reasonable and necessary and have worded them to reflect the advice in the national Planning Practice Guidance.
23. Conditions regarding the detailing and provision of landscaping, including a Landscape and Ecological Management Plan, details of the estate roads, vehicle and bicycle parking and vehicle turning areas, loading and unloading provision and lighting are not necessary as they would be covered under reserved matters. However, I have referred to compliance with the principles in the Landscape Framework Plan, as well as the design principles and parameters, in

Condition 4. A condition regarding the provision and maintenance of a sustainable drainage system is unnecessary as this would be adequately secured under the S106 Planning Agreement.

*M J Whitehead*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### **FOR THE APPELLANT:**

Roy Pinnock Solicitor	Partner, Dentons Solicitors
Jonathan Orton	Planning Director, Origin 3
Colin Danks	Director, Origin 3
Rupert Lyons MSc CMILT	Director, Transport Planning Associates

### **FOR THE LOCAL PLANNING AUTHORITY:**

James Holman MRICS MRTPI FAAV	Principal Planning Officer, Cornwall Council
Elizabeth Dunstan Solicitor	Planning Policy and Special Projects Legal Consultant, Cornwall Council
Rick Clayton MSc BEng	Team Leader, Transport Planning, Cornwall Council
Jane Astbury Solicitor	Solicitor, Cornwall Council
Huw Gibbon BSc MIHE EngTech	Principal Development Officer, Highways, Cornwall Council
Chris Rose MSc MRTPI	Principal Development Officer, Affordable Housing, Cornwall Council

## **DOCUMENTS SUBMITTED FOLLOWING THE OPENING OF THE HEARING**

- 1 Costs application and accompanying documents, submitted by the Council at the hearing.
- 2 Statement on Highways contributions, submitted by the Council at the hearing.
- 3 Letter, dated 15 February 2016, from Dentons, submitted by the appellant at the hearing.
- 4 Draft S106 Unilateral Undertaking, submitted by the appellant at the hearing.
- 5 Track changes against draft S106 Agreement, dated September 2016, submitted by the appellant at the hearing.
- 6 Revised S106 Agreement, submitted by the appellant at the hearing.
- 7 Public open space play area accessibility plans, submitted by the Council at the hearing.
- 8 Education and open space contributions spread sheets, submitted by the Council at the hearing.
- 9 Air Quality document, submitted by the Council at the hearing.
- 10 E-mail confirming the name of the appellant, submitted by the appellant at the hearing.
- 11 Environmental Statement Chapter 9 Cultural Heritage, January 2009, submitted by the appellant on 18 February 2016.
- 12 Letter, dated 19 February 2016, accompanying the S106 Agreement and S278 Agreement, submitted by the Council on 22 February 2016.
- 13 S106 Agreement, submitted by the Council on 22 February 2016.
- 14 S278 Agreement, submitted by the Council on 22 February 2016.
- 15 S106 Unilateral Undertaking, submitted by the appellant on 22 February 2016.
- 16 E-mail from Cornwall Council, dated 23 February 2016, regarding the date of the application.
- 17 E-mail from Cornwall Council, dated 23 February 2016, regarding the dates of the receipt and validation of the application.

- 18 Higher Newham Farm & Village Design Code Principles June 2015, submitted by the Council on 23 February 2016

**DOCUMENTS SUBMITTED FOLLOWING THE OPENING OF THE HEARING**

- A Plan Ref 1203 PL111 B: Site Access Layout Signalised Junction, submitted by the appellant on 18 February 2016.

Richborough Estates



## **SCHEDULE OF CONDITIONS**

- 1) Prior to the commencement of development details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for development.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - (a) Location Plan No 13-050-203 B
  - (b) Parameters Plan No 13-050-601 A
  - (c) Access Arrangement Plan No 1203-80-PL111 B
  - (d) Higher Newham Farm & Village Design Code Principles June 2015
  - (e) The principles in the Landscape Framework Plan No 13-050-403 E
- 5) No development shall commence until an Environmental Construction and Management Plan (ECMP) has been submitted to and approved in writing by the local planning authority. The approved ECMP shall be adhered to throughout the construction of the development and shall provide for the following:
  - (a) means of access for construction vehicles including routes to and from the site;
  - (b) on site construction worker, visitor and site operative parking;
  - (c) a scheme to encourage the use of public transport for contractors;
  - (d) loading and unloading of plant and materials;
  - (e) storage of plant and materials used in constructing the development;
  - (f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (g) wheel washing facilities;
  - (h) measures to control the emission of dust and dirt during construction;
  - (i) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - (j) the operation of plant and machinery associated with engineering operations;
  - (k) site security;
  - (l) fuel, oil and chemicals storage, bunding, delivery and use;
  - (m) how both minor and major spillage will be dealt with;
  - (n) containment of silt/soil contaminated run-off;

- (o) disposal of contaminated drainage, including water pumped from excavations;
  - (p) site induction for workforce highlighting pollution prevention and awareness;
  - (q) a scheme to dispose of surface water run-off during the construction phase;
  - (r) anticipated number, frequency and size of construction vehicles entering / exiting the site;
  - (s) delivery times of construction materials and times of demolition and construction works, which shall take place only between 0800 hours and 1800 hours on Mondays to Fridays and 0800 hours and 1300 hours on Saturdays and shall not take place at any time on Sundays or Public/Bank Holidays; and
  - (u) a scheme for the remediation and management of invasive plant species on and in proximity to the site.
- 6) No development other than that required to be carried out as part of an approved scheme of remediation shall commence until criteria 1 to 3 have been complied with. If unexpected contamination is found after development has begun, development shall be halted on that part of the site affected by the unexpected contamination and details of the contamination found shall be submitted in writing to the local planning authority. Criteria 1 to 3 shall be complied with in relation to the unexpected contamination, unless otherwise agreed in writing by the local planning authority.

Criterion 1: Site Characterisation

An investigation and risk assessment shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be submitted to and approved in writing by the local planning authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority. The report of the findings shall include:

- (a) a survey of the extent, scale and nature of contamination;
- (b) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments;
- (i) an appraisal of remedial options, and proposal of the preferred option(s). This shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

### Criterion 2: Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing, by the local planning authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site shall not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

### Criterion 3: Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (sometimes referred to as a validation report) that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

- 7) Prior to the commencement of the development a scheme to include the method by which trees to be retained that are identified on Plan No 13-24-43D shall be protected during the course of the development shall be submitted to and approved in writing by the local planning authority. The scheme shall identify a Root Protection Area that shall be enclosed by tree protection fencing which shall, unless otherwise agreed in writing by the local planning authority, be erected in accordance with the specification given in the British Standard BS 5837. The tree protection fencing shall be erected prior to commencement of any works associated with the development and be retained and maintained until the completion of the development. At no time shall any works in connection with the development, including storage, access, cement mixing, bonfires, excavations or other level changes occur within the protected area and at no time shall the protected trees be damaged in any way. The development shall be implemented in strict accordance with the approved tree protection scheme.
- 8) No development shall take place until detailed plans in accordance with the junction arrangement shown on Plan No 1203-80-PL111 B have been submitted to and approved in writing by the local planning authority relating to line, level and layout of the access road junction and pedestrian crossing over the A390 and their means of construction and surface water drainage. No part of the development shall be occupied until the access road junction and pedestrian crossing has been laid out and constructed in accordance with the approved detailed plans.
- 9) Power lines shall be sited underground unless details of alternative arrangements have been submitted to and approved in writing by the local planning authority. Details of any installation or maintenance of underground or overhead utility services shall be submitted to and approved in writing by the local planning authority prior to installation. The details shall accord with the National Joint Utilities Group publication 10 'Guidelines for the Planning,

Installation and maintenance of Utility Services in Proximity to Trees'. The installation shall be undertaken in accordance with the approved details.

- 10) No vegetation shall be cleared from the Site during the bird breeding season of 1 March to 30 September inclusive, unless details of alternative arrangements have been submitted to and approved in writing by the local planning authority.
- 11) No demolition/development shall take place other than in accordance with the Archaeological Mitigation given in Chapter 9 Cultural Heritage paragraphs 9.51 to 9.56 of the Environmental Statement, dated January 2009.
- 12) The development hereby permitted shall be carried out in accordance with the recommendations to mitigate the potential ecological impacts and opportunities for ecological enhancement set out in the ecological report: 'Higher Newham Farm and Village Ecological Assessment', dated August 2014.

Richborough Estates