



Appeal Decision

Hearing (Virtual) held on 6 July 2021

Site Visit made on 8 June 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2021

Appeal Ref: APP/T3725/W/20/3264803

Land on the north side of Birmingham Road, Hatton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Taylor Wimpey UK Ltd, Mr John Stuart Burnham, Mr David Ian Burnham and Mr Dennis Keith Burnham against the decision of Warwick District Council.
- The application Ref W/20/1176, dated 22 July 2020, was refused by notice dated 28 October 2020.
- The application sought planning permission for Application for Variation of Condition 2 (approved plans) and Condition 14 (Access Layout) and Removal of Condition 10 (Provision of Footpath/Cycle link) of planning permission W/19/0933 without complying with conditions attached to planning permission Ref W/19/0933, dated 19 February 2020, for 150 dwellings (Class C3); new vehicular access from Birmingham Road: new temporary vehicular access for sales and construction from Birmingham Road; and associated works.
- The conditions in dispute are Nos 2, 10 and 14 which state that:
 - (2) *The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) 0102/1000 Rev C, 0102/2000 Rev B, 0102-116A, 0102-118, 0102-119, 10-05-01-P9, 10-05-02-P9, 10-05-03-P6, 10-06-P8, 10-07-P8, 20142-DG-PL, 20142-DSG-PL, 20142-SG-PL, AA11, AA24, AA32, AA42, BU2, The Devonford – Plan, The Devonford – Elevations, The Devonford – Elevations (Plots 64&65 only), The Keydale – KE, The Keydale – KE (Plot 57 only), The Keydale – KE (SP), The Keydale – KE (SP) (Plot 131 only), The Beauford – NA21, The Byford – NA32, The Ransford – NA46 – Plans, The Ransford – NA46 – Elevations, The Ransford – NA46 – Elevations (Plot 52&63 only), The Stanford – NA47 – Plans, The Stanford – NA47 – Elevations, The Ruston – NB52 – Elevations, The Rushton – NB52 – Plans, The Canford – PA25, The Gosford – PA34, The Lavenham – PD51 – Elevations, The Lavenham – PD51 – Plans, The Teasdale – PT45 – Elevations and The Teasdale – PT45 – Plans, and specification contained therein, submitted on 29 May 2019, approved drawing(s) 20142/PL/01E, c-1562-07 Rev B and c-1562-08, and specification contained therein, submitted on 27 August 2019, approved drawing(s) 890193-10-07-P8, 1562-01J, 1562-02J, 1562-03J, 1562-04L, 1562-06K and 20142-EP-01 Rev D, and specification contained therein, submitted on 18 October 2019 and approved drawing number 1562-05J, and specification contained therein, submitted on 24 October 2019.*
 - (10) *The development hereby permitted shall not be occupied unless and until a pedestrian/cycle link has been provided to connect the development with Ebrington Drive. The pedestrian/cycle link shall be constructed to the satisfaction of the Local Planning Authority in consultation with Warwickshire County Highways in accordance with a scheme which will have first been submitted to and approved in writing by the Local Planning Authority.*

- (14) The development shall not be occupied until the public highway A4133 has been improved so as to provide for the site access in accordance with a scheme approved in writing by the Local Planning Authority in consultation with the Highway Authority, as shown on plan 890193 10-09 P3.*
 - *The reasons given for the conditions are:*
 - (2) For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.*
 - (10) To ensure that the development has acceptable permeability with the existing residential development in accordance with Policies SC0 and TR1 of the Local Plan 2011-2029.*
 - (14) In the interests of vehicular and pedestrian safety in accordance with Policy TR1 of the Warwick District Local Plan 2011-2029.*
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Decision

1. The appeal is allowed and planning permission is granted for the variation of condition 2 (approved plans) and condition 14 (Access Layout) and removal of condition 10 (Provision of Footpath/Cycle link) of planning permission W/19/0933, at Land on the North Side of Birmingham Road, Hatton in accordance with the terms of the application, Ref W/20/1176, dated 22 July 2020, subject to the conditions set out in the Schedule to this decision.

Procedural Matters

2. During the course of the appeal the appellants submitted a signed and dated Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. The UU would ensure a financial contribution towards footway and cycleway improvements along the neighbouring highway.
3. During the hearing the Council confirmed that a Deed of Variation to vary the existing planning obligation was not necessary as the planning obligation includes a clause for subsequent amendments to the planning permission without the need for Deeds of Variation.
4. During the hearing it became apparent that the appellants had addressed other third party landownership issues and were close to an agreement with AC Lloyd Homes regarding securing access over their land to provide the Ebrington Drive footpath/cycle link. Whilst I have taken this into account, I have considered the proposal on its individual merits.

Main Issue

5. The main issue is whether the removal of the footpath/cycle link would result in an unsustainable form of development with regard to social cohesion and accessibility to local services and facilities.

Reasons

6. The appeal site is a large field that borders existing residential development on one side, Smith's Covert to the north, with the A435 Birmingham Road extending along its southern boundary. The site is allocated for residential development in the Warwick Local Plan (2017) (WLP) and benefits from planning permission for 150 dwellings.
7. Hatton is a relatively modern village and is made up of clusters of houses interspersed with green open spaces and wooded areas. The village includes a

- village hall, play area and shop and bus stops connecting the village to the local area. A petrol station is located on the southern side of Birmingham Road.
8. The Council, in the Statement of Common Ground, acknowledge that the need for a footpath/cycle link was not discussed at the Local Plan examination, that it is not a requirement under the site allocation nor that it was discussed at pre-application stage. However, the Council contend that the footpath/cycle link is desirable to connect future occupiers to the existing community and that without the link it would be less attractive for residents to interact and visit one another.
 9. The proposed development in terms of its overall appearance and layout would be read as an appropriate extension of Hatton and would still be connected to the village and its facilities through links on Birmingham Road and Ugly Bridge Road. The layout includes a legible street hierarchy, open spaces and a locally equipped area of play which would provide spaces for social interaction between existing residents and future occupiers whether formal, arranged or incidental allowing for the coming together of people. In my judgement, the absence of the footpath/cycle link at Ebrington Drive would not result in a segregated or isolated form of development and would not unacceptably undermine the ability of existing and future residents to move through the village, to meet or interact.
 10. The Council and a number of local residents expressed concerns that the absence of the link would deter future residents from walking into the village and visiting facilities including the village green, shop and hall. Based on the comments of local residents the village hall is well used including for parent and baby classes, pilates and dance groups. Residents also pointed out that the village shop is open for long hours and, particularly during the pandemic, has become an important facility for the local community providing deliveries and hot food options. The shop and hall, in my view, are attractive destinations in their own right and are likely to draw future occupants into the village to visit them. There is no credible evidence before me to suggest that future occupants would not make a conscious effort to visit facilities in the village in the absence of the Ebrington Drive link.
 11. I am also mindful that the creation of communities goes beyond just physical linkages and is made up by individuals and local groups having buildings and spaces to interact in which to establish connections and friendship groups. I am satisfied that the proposal would not undermine social cohesion or community sustainability.
 12. All parties during the hearing agreed that without the pedestrian/cycle link in question future occupiers would have to walk a greater distance using existing dedicated footpath and cycle routes along Ugly Bridge Road or Birmingham Road. The Ugly Bridge Road route, despite the local topography, provides a legible and suitable physical environment for cyclists and pedestrians, including parents with prams and those with reduced mobility due to its width and presence of street lighting. At the time of the site visit I noted several people using the route going in and out of the village. Whilst this is a snapshot in time it is evident that it is a well-used route and there is nothing before me to suggest that it would not remain so for future occupiers.
 13. I acknowledge that Birmingham Road is a busy road and currently the section between Ugly Bridge Road and Charingworth Drive is not an attractive route for

pedestrians due to overgrown planting and sections of narrow pavement. Based on the evidence before me, including the advice of the Highway Authority, I am satisfied that the highway works proposed by the appellant and secured by the UU would improve the quality of the physical environment for both pedestrians and cyclists. The works would maintain their safety and encourage the use of Birmingham Road as a route into the village.

14. The works would also improve access across Birmingham Road to the petrol station. I acknowledge that the product range at the petrol station is more focused towards drivers filling up with fuel, but it would still provide an additional option for residents including buying goods to top up their weekly shop.
15. The Council contend that these works would not make the route more desirable as residents would have to 'leave' the development and re-enter the village. However, I find that this would not be unacceptable given future residents would travel along Birmingham Road for only a short distance. Furthermore, existing and proposed dwellings would extend along the road frontage maintaining the impression that residents are still within the village.
16. The routes along Ugly Bridge Road and Birmingham Road would be less direct compared to the Ebrington Drive link. However, I am satisfied that the path of the routes and the overall distances would not be unduly convoluted or discourage future occupiers from walking into the village.
17. I conclude that the deletion of condition 10 would not conflict with the requirements of WLP Policies SC0 and BE1 which, amongst other things, seek the delivery of high-quality layouts and design to integrate with existing communities; good access to community facilities and development to harmonise with existing settlements in terms of physical form, patterns of movement and land use.

Other Matters

18. Condition 2 relates to the approved plans. Condition 14 relates to the site access. The appellant is seeking to replace the approved site access plan with a new one. They have also advised that the plan number referred to in condition 14 was not submitted with the original application and is incorrect. Neither of the main parties have raised an objection to the amendments to conditions 2 and 14 and I see no reason to take a different view. I have amended the conditions accordingly.
19. The potential for future development and the effect on property values is a matter which falls outside of what I can consider in my decision.
20. I acknowledge local concerns that local schools and doctor's surgeries are over-subscribed. However, I have not been provided with any evidence to support these claims and this does not alter my overall decision.
21. Whilst the appeal site is currently a field there is no credible evidence before me to indicate that the proposed development would adversely affect wildlife in the area.
22. Concerns have been raised that the Road Safety Audit is not representative of true road conditions. At the hearing the Council confirmed that they and the Highway Authority were satisfied with its content and the conclusions reached.

23. None of the matters mentioned by third parties, either individually or collectively, outweigh or alter the conclusion reached on the main issue.

Conditions

24. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
25. In the interests of clarity, I have imposed conditions on the original planning permission that I consider remain relevant.
26. The PPG also indicates that a grant of planning permission under Section 73 should not extend the time period for implementation. I have therefore amended Condition 1 to include the date of the original permission.
27. The Council suggested a condition for a scheme to satisfy their air quality requirements. At the hearing the Council acknowledged that the provision of electric vehicle charging points would meet their requirements in this respect. As such, I have amended the condition accordingly.
28. During the hearing the Council agreed that suggested conditions relating to mud and debris prevention measures and a requirement for the development to be carried out in accordance with the Arboricultural Impact Assessment and Method Statement Report were not necessary as they essentially duplicated details to be secured under conditions 4 and 3 respectively. Consequently, they have not been imposed.

Conclusion

29. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from 19 February 2020 being the date of the original planning permission.
- 2) The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) 0102/2000 Rev B, 0102-116A, 0102-118, 0102-119, 10-05- 01-P9, 10-05-02-P9, 10-05-03-P6, 10-06-P8, 10-07-P8, 20142-DG-PL, 20142-DSG-PL, 20142-SG-PL, AA11, AA24, AA32, AA42, BU2, The Devonford – Plan, The Devonford – Elevations, The Devonford – Elevations (Plots 64&65 only), The Keydale – KE, The Keydale – KE (Plot 57 only), The Keydale – KE (SP), The Keydale – KE (SP) (Plot 131 only), The Beauford – NA21, The Byford – NA32, The Ransford – NA46 – Plans, The Ransford – NA46 – Elevations, The Ransford – NA46 – Elevations (Plot 52&63 only), The Stanford – NA47 – Plans, The Stanford – NA47 – Elevations, The Ruston – NB52 – Elevations, The Rushton – NB52 – Plans, The Canford – PA25, The Gosford – PA34, The Lavenham – PD51 – Elevations, The Lavenham – PD51 – Plans, The Teasdale – PT45 – Elevations and The Teasdale – PT45 – Plans, and specification contained therein, submitted on 29 May 2019, approved drawing(s) 20142/PL/01E, c-1562-07 Rev B and c-1562-08, and specification contained therein, submitted on 27 August 2019, approved drawing(s) 890193-10-07-P8, 1562-01J, 1562-02J, 1562-03J, 1562-04L, 1562-06K and 20142-EP-01 Rev D, and specification contained therein, submitted on 18 October 2019 and approved drawing number 1562-05J, and specification contained therein, submitted on 24 October 2019. And drawing number 20586_08_020_01 Rev C and specification contained therein, submitted on 28 July 2020.
- 3) No development or other operations (including demolition, site clearance or other preparatory works) shall commence unless and until the tree and hedgerow protection measures have been put into place in full accordance with the details set out in the document titled Stage 1 & 2 Arboricultural Impact Assessment and Method Statement Report (Rev.9) dated August 19. Thereafter, the protective fencing shall remain in place for the full duration of any construction work. In addition no excavations, site works, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy of any protected tree(s); no equipment, machinery or structure shall be attached to or supported by a protected tree(s); no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area or any other works carried out in such a way as to cause damage or injury to the tree(s) by interference with their root structure and that no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the tree(s).
- 4) The development (including any works of demolition) shall proceed only in strict accordance with a construction method statement which has been submitted to and approved in writing by the local planning authority. The approved statement shall be strictly adhered to throughout the construction period and shall provide for:
 - the parking of vehicles of site operatives and visitors;

- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate;
- wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- Dust management and suppression measures - level of mitigation determined using IAQM guidance
- a scheme for recycling / disposing of waste resulting from demolition and construction works.
- Any temporary measures required to manage traffic during construction
- Plans and details of haul roads within the site and for the turning and unloading and loading of vehicles within the site during construction
- Noise assessment and mitigation method statements for the construction activities; in accordance with provisions of BS 5228:2009 Code of practice for noise and vibration control on construction and open sites - Part 1 and 2
- Concrete crusher if required or alternative procedure
- Delivery times and site working hours
- Site lighting
- Access and protection arrangements around the site for pedestrians, cyclists and other road users
- Restrictions on burning and details of all temporary contractors buildings
- Plant and storage of materials associated with the development process
- External safety and information signing notices
- Complaints procedures, including complaints response procedures and dedicated points of contact
- Best practicable means shall be employed at all times to control noise and dust on the site including:
 1. Work which is likely to give rise to noise nuisance be restricted to the following hours: Mon-Fri 7.30 am - 5 pm, Sat 7.30 am - 1pm. No working Sundays or Bank Holidays.
 2. Delivery vehicles should not be allowed to arrive on site before 8 am or after 4.30 pm Mon - Fri, 8 am - 1 pm Sat and not on Sundays or Bank Holidays.

- 5) The development hereby permitted shall not commence unless and until a hard and soft landscaping scheme has been submitted to and approved in writing by the local planning authority. Details of hard landscaping works shall include boundary treatment, including full details of the proposed boundary walls, railings and gates to be erected, specifying the colour of the railings and gates; footpaths; and hard surfacing, which shall be made of porous materials or provision shall be made for direct run-off of water from the hard surface to a permeable or porous area. The hard landscaping works shall be completed in full accordance with the approved details within three months of the first occupation of the development hereby permitted; and all planting shall be carried out in accordance with the approved details in the first planting and seeding seasons following the first occupation. Any tree(s)

or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes in the opinion of the local planning authority seriously damaged, defective or diseased shall be replaced in the next planting season with another of the same size and species as that originally planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 - Transplanting Root-balled Trees and BS4428 - Code of Practice for General Landscape Operations.

- 6) The development hereby permitted shall not be commenced until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall not then be occupied until the scheme has been implemented to the satisfaction of the Local Planning Authority.
- 7) No development and subsequent use of the development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority in consultation with the LLFA. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall:
 - Undertaken infiltration testing in accordance with the BRE 365 guidance to clarify whether or not an infiltration type drainage strategy is an appropriate means of managing the surface water runoff from the site.
 - Demonstrate that the surface water drainage system(s) are designed in accordance with 'The SuDS Manual', CIRIA Report C753.
 - Where flooding occurs onsite to store the 1 in 100 year climate change event details should be provided of the storage capacity required outside of the proposed formal drainage system. Details of the depths and locations of flooding should also be provided to the LLFA where the depths may be unsafe Hazard mapping may be required to ensure the development remains safe to users of the site
 - Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
 - Provide evidence to show an agreement from Severn Trent Water to connect to the existing surface water network.
 - Provide plans and details showing the allowance for exceedance flow and overland flow routing, overland flow routing should look to reduce the impact of an exceedance event.

- 8) No development shall take place until: -

- 1.(a) A site investigation has been designed for the site using the information obtained from the desk-top study and any diagrammatical

representations (conceptual model). This should be submitted to and approved in writing by the planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:

- A risk assessment to be undertaken relating to human health
- A risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected
- An appropriate gas risk assessment to be undertaken
- Refinement of the conceptual model
- The development of a method statement detailing the remediation requirements

(b) The site investigation has been undertaken in accordance with details approved by the planning authority and a risk assessment has been undertaken.

(c) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation, has been submitted to the planning authority. The method statement shall include details of how the remediation works will be validated upon completion. This should be approved in writing by the planning authority prior to the remediation being carried out on the site.

2. All development of the site shall accord with the approved method statement.

3. If during development, contamination not previously identified, is found to be present at the site then no further development shall take place (unless otherwise agreed in writing with the planning authority for an addendum to the method statement). This addendum to the method statement must detail how this unsuspected contamination shall be dealt with and shall be submitted to and approved in writing by planning authority. The site shall not be occupied until the approved addendum has been complied with. 4. Upon completion of the remediation detailed in the method statement a report shall be submitted to the planning authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

- 9) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted and approved in writing by the Local Planning Authority (LPA) in consultation with Warwickshire County Council (WCC). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall:
- a. Demonstrate that the surface water drainage system(s) are designed in accordance with CIRIA C753 The SuDS Manual.

- b. Evidence that the discharge rate generated by all rainfall events up to and including the 100 year plus 40% (allowance for climate change) critical rain storm has been limited to the QBAR runoff rates for all return periods.
 - c. Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and outfall arrangements. Calculations should demonstrate the performance of the drainage system for a range of return periods and storms durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
 - d. Demonstrate the proposed allowance for exceedance flow and associated overland flow routing.
 - e. Provide a Maintenance Plan to the LPA giving details on how the entire surface water system shall be maintained and managed after completion for the life time of the development. The name of the party responsible, including contact name and details, for the maintenance of all features within the communal areas onsite (outside of individual plot boundaries) shall be provided to the LPA.
- 10) No development shall be carried out above slab level unless and until samples of the external facing materials to be used have been submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved details.
- 11) The development hereby permitted shall be carried out strictly in accordance with the Landscape and Ecological Management Plan reference CSA/2684/05 (updated April 2019) received on 29 May 2019.
- 12) The development hereby permitted shall be carried out strictly in accordance with the Construction and Environmental Management Plan (CEMP) reference CSA/2684/06 (updated April 2019) received on 29 May 2019.
- 13) The development shall not be occupied until the public highway A4133 has been improved so as to provide for the site access in accordance with a scheme approved in writing by the Local Planning Authority in consultation with the Highway Authority, as shown on plan 20586_08_020_01 Rev C.
- 14) The layout of the estate roads serving the development [including footways, verges and footpaths] shall not be designed other than in accordance with the principles and guidance as set out in 'Transport and Roads for Developments: The Warwickshire Guide 2001'.
- 15) No dwelling shall be occupied until the estate roads [including footways] serving it have been laid out and substantially constructed to the satisfaction of the Highway Authority in accordance with the details approved in writing by the Local Planning Authority.
- 16) The temporary construction/sales access shall be constructed strictly in accordance with the details as shown on plan reference 20586_08_020_01b. The access shall be used for a maximum period of three years from the commencement of the development or the substantial completion of the primary access (whichever is the sooner) and thereafter, the land shall be restored to its former condition. Any new planting shall be

carried out within the first planting season following the cessation of the use of the access.

- 17) The lighting scheme shall be carried out in accordance with the details submitted on plan reference 10-06 P8 received by the Local Planning Authority on 29 May 2019. In considering the lighting scheme, the local planning authority expects lighting to be restricted around the boundary edges, particularly along hedgerows, where protected species are likely to be found, and to be kept to a minimum at night across the whole site in order to minimise impact on emerging and foraging bats and other nocturnal wildlife. This could be achieved in the following ways:
- a. low energy LED lighting should be used in preference to high pressure sodium or mercury lamps;
 - b. the brightness of lights should be as low as legally possible; and
 - c. lighting should be timed to provide some dark periods.
- 18) The development shall not be occupied until details of electric vehicle charging points have been submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be implemented in accordance with the approved details and shall thereafter be retained.

APPEARANCES

FOR THE APPELLANT:

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Chris Young Q.C of No.5 Chambers

Luke Hilson of Barton Willmore LLP

Alex Bennett of M-EC

FOR THE LOCAL PLANNING AUTHORITY:

Dan Charles

INTERESTED PARTIES:

David Green of Delta Planning

Des Wynne of A.C Lloyd Homes

Veronica Chapman

Christopher Cresswell

Jennifer Smith Doyle