

Agenda Item A5	Committee Date 6 December 2014	Application Number 14/00787/VCN
Application Site Pontins Holiday Camp Carr Lane Middleton Lancashire		Proposal Erection of a retirement village comprising dwelling houses and other residential accommodation, retail, leisure and recreation (pursuant to the variation of condition number 21 (xxi) on previously approved application number 00/00156/OUT relating to the use of the site as a retirement village. The variation seeks to remove the restrictive occupancy from the applicant's land only)
Name of Applicant Moorfields Corporate Recover LLP (Coast Developments (NW))		Name of Agent Mr Trevor Adey
Decision Target Date 14 October 2014		Reason For Delay Awaiting the Inspector's decision in relation to 13/00805/VLA and the subsequent committee cycle
Case Officer		Mrs Jennifer Rehman
Departure		No
Summary of Recommendation		Approve

1.0 The Site and its Surroundings

- 1.1 Middleton Towers is a 23 hectare site of the former Pontins Camp that closed in 1994. It is located to the west side of Carr Lane, 1km west of the village of Middleton. Heysham lies approximately 3km to the north and Morecambe Town Centre is located approximately 3.5 km along the coast line.
- 1.2 It is a previously developed site located within the countryside area surrounded by other tourism and leisure uses, such as Ocean Edge Leisure Park and Greendales Leisure Park. Heysham Power Station is located north of the site beyond which lies Morecambe Bay and Middleton Sands Special Area of Conservation (SAC), Special Protected Area (SPA), Site of Special Scientific Interest (SSSI) and a Ramsar Site.
- 1.3 The only vehicular access to the site is via Middleton village along Carr Lane, which is a narrow country road with substandard alignment and no footways. There are no public bus services which run along Carr Lane towards the appeal site. The entrance to the site is gated.
- 1.4 The site benefits from planning consent for the construction of a self-contained retirement village. This application relates to a smaller proportion of the (whole) consented retirement village - the part of the site that has been partly-built out. Currently only 55 dwellings have been constructed and 36 units sold. There are 3 Grade II listed buildings within the appeal site which are used for communal purposes, namely the leisure club and site offices.
- 1.5 Whilst the quality of the buildings constructed and landscaped areas are good and represent high quality design, the environmental condition of the site for the existing residents is not particularly appealing. This is a consequence of the site running into commercial difficulties and the development stalling, leaving areas of undeveloped land and large hoardings around the

remaining parcels of land.

- 1.6 The Development Plan for the district identifies the appeal site within designated Countryside Area and as a Tourism Opportunity Area.

2.0 The Proposal

- 2.1 The applicant seeks to vary condition 21 of the original planning permission so as to remove the effects of condition 21 from their land only.

Condition 21 currently reads:

'The development hereby permitted relates to a continuing care retirement village and no other form of residential development'.

The proposed wording for condition 21 reads:

'Other than the land contained within the red line as shown on plan ref AIB/MT-001, the development hereby permitted relates to a continuing care retirement village and no other form of residential development'.

3.0 Site History

- 3.1 Pontins occupied the site from the late-1930s, but the site closed in 1994 and it remained unused from that date, until an outline planning application (2000) proposed a retirement village. This application was recommended for refusal by Officers, but that recommendation was overturned by members of the Planning Committee at the time. The Secretary of State (SoS) called the decision in, and resolved to grant outline consent for the 650-unit scheme with ancillary facilities, subject to planning conditions and a legal agreement.

- 3.2 The legal agreement sought to limit the number of units to 650, with 20% to be 'car-free' units; deliver affordable housing; restrict the occupation to a head of the household no younger than 60 years of age; secure the phasing of the development; provide a free bus service; control the use of the leisure facilities; and provide a Green Travel Plan. Amongst a number of conditions, there was also a condition controlling the use of the site as a retirement village. The Inspector and SoS considered these measures essential to secure an acceptable form of development. The legal agreement was later varied to reduce the age restriction to 55 years (not 60) for the head of household.

- 3.3 There have been recent (duplicate) applications to vary the legal agreement to remove the effects listed in Paragraph 3.2 (13/00805/VLA and 13/01145/VLA). The latter was refused at Committee in May 2014, but the former was appealed on the grounds of non-determination. One of the main reasons for refusing 13/01145/VLA was because of the applicant's failure to provide an appropriate viability appraisal to support their claims that the age restriction rendered the development unviable. The appellant eventually decided to provide sufficient viability evidence to demonstrate that the age restriction was a key constraint to unlocking the future development of the site. At the informal Hearing appeal in September 2014, the appellant also revised their position in relation to the affordable housing clause and they later proposed to retain a provision of 10% affordable housing, rather than remove it completely as originally intended. It was on this basis, the appellant and officers on behalf of the Council, reached a resolution and an agreed position.

- 3.4 The Inspector considered all of the evidence before her and allowed the appeal on 24 September 2014. In doing so she concluded that the elements of the planning obligation no longer served a useful planning purpose. Relevant to this proposal, was the Inspector's decision to remove the age restriction in relation to part of the site. A copy of the Inspectors decision is attached as a background paper.

- 3.5 The applications directly relevant to the current proposal are summarised as follows:

Application Number	Proposal	Decision
00/00156/OUT	Outline application for a retirement village comprising dwellinghouses, other residential accommodation, retail,	Approved after Call-In by the Secretary of

	leisure, recreation and ancillary administration; creation of a new access and circulation road.	State subject to a legal agreement
05/00740/REM	Reserved matters application for retirement village	Approved
07/00799/FUL	Section 73 application to amend details of layout of retirement village	Approved subject to conditions only (i.e. no Deed of Variation)
09/01188/FUL	Erection of 33 dwellings with associated external works	Approved subject to conditions only (i.e. no Deed of Variation)
13/00265/RENU	Renewal of planning permission 09/01188/FUL for the erection of 33 no. dwellings with associated external works	Approved subject to conditions only (i.e. no Deed of Variation)
13/00805/VLA	Variation of legal agreement on 00/00156/OUT to remove obligations relating to affordable dwellings and age restriction occupancy on the site only and to remove the restrictions on the on-site leisure facilities to allow use by the wider public (s106A application).	Appealed against non-determination Appeal allowed following changes to the appellant's case.
13/01145/VLA (duplicate application)	Variation of legal agreement on 00/00156/OUT to remove obligations relating to affordable dwellings and age restriction occupancy on the site only and to remove the restrictions on the on-site leisure facilities to allow use by the wider public (duplicate s106A application).	Refused
14/00789/RCN	Erection of 33 dwellings (pursuant to the removal of condition number 3 on previously approved application 13/00265/RENU (renewal of 09/01188/FUL) relating to restricted age occupancy)	Pending consideration See agenda item A6.

4.0 Consultation Responses

4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
County Highways	<p>Objects - the proposal would change the nature of vehicle movements to and from the site on Carr Lane, which is a narrow county road with substandard alignment and no footways, and would create significant detrimental impact on the surrounding highway network.</p> <p>The Highway Authority have provided TRICs data (as part of their appeal representations) indicating the significant difference between restricted and unrestricted housing. The latter generates peaks in vehicles movements at certain times of the day. These peaks would place strain on Carr Lane and associated junctions. The Highway Authority also make comments about the number of car-free units and the status of the internal roads. While it is gated the roads would not be adopted. The Highway Authority contend that the proposal to remove the condition amounts to new development and that a full planning application should be sought. If approved, the Highways Authority recommends the imposition of a construction management plan.</p>
Parish Council	No comments received within statutory timescale.
Policy	No comments received within statutory timescale.
Conservation	No comments received within statutory timescale.
County Education	No comments received within statutory timescale.
ONR (Nuclear Responsibility)	No comments received within statutory timescale.
Fire Service	General advice regarding access and water supplies is provided.

5.0 Neighbour Representations

5.1 At the time of drafting this report, three letters of representation have been received, one in support and two against. The letter in support is brief and provides no commentary of the reasons for support. The letters in opposition cite the following:

- A smaller retirement village could have been viable;
- Despite properties being unsold, there has been interests in the development but sales have not advanced because of the uncertainty surrounding the various applications to remove the age restriction and the deliberate deterioration of the site;
- Lack of community consultation;
- Lack of interest from local transport companies to provide services to the site;
- Impact on local highway network;
- Moorfields are marketing it as a 'retirement village';
- Two retirement developments in Lancaster area claim to be selling fast;
- There is a shortage of retirement properties;
- Any change to the restriction is a gross betrayal of the developer and will seriously be detrimental to the quality of life of residents; and
- Inadequate marketing of the site/properties.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework (NPPF)

Paragraphs 7, 12, 14 and 17 - Sustainable Development and Core Principles
 Paragraph 32, 34 and 38 Access and Transport
 Paragraphs 49, 50 and 55 - Delivering Housing
 Paragraphs 56, 58, 60, 6164 – Requiring Good Design
 Paragraphs 109, 115, 117, 118 – Conserving the Natural Environment
 Paragraphs 131-133 - Historic Environment
 Paragraphs 186, 187, 196, 197, 203-206 – Decision-taking

6.2 Lancaster District Core Strategy (adopted July 2008)

SC1 – Sustainable Development
 SC3 – Rural Communities
 SC4 – Meeting District's Housing Requirements
 E2 – Transportation Measures

6.3 Lancaster District Local Plan - saved policies (adopted 2004)

H12 – Layout, design and use of materials
 E4 – Countryside Area
 TO2 – Tourism Opportunity Area

6.4 Emerging Development Management DPD

The Council is in the latter stage of preparing its' emerging Local Plan. The Development Management DPD and Morecambe Area Action Plan have both been found to be soundly prepared, subject to the Inspector's binding modifications. It is anticipated that both documents will be reported to Full Council shortly with a resolution to formally adopt them as part of the Local Plan for Lancaster District 2011-2031. Given the advanced stage of preparation, the policies contained in both documents are now considered to hold significant weight in decision-making. The following policies are relevant:

DM20 – Enhancing Accessibility and Transport Linkages
 DM21 – Walking and Cycling
 DM22 – Vehicle Parking Provision
 DM35 – Key Design Principles
 DM41 – New Residential dwellings
 DM42 – Managing Rural Housing Growth

The Land Allocations DPD has not advanced at the same rate but has gone through the first

Preferred Options consultation. Policies in the emerging Local Plan are a material consideration. Specific to this application is **Policy HEY4** of the Land Allocations DPD. This policy encourages the implementation of the existing planning consent for the delivery of a specialist retirement village in the first instance. Only where this is shown not to be a viable proposal will the Council consider alternative proposals for the site. Such proposals should include measures to improve the quality and frequency of public transport provision, and improved opportunities for pedestrian and cycle accessibility to the site due to the site's remote location to make the site more sustainable. This policy only received slight attention at the Draft Preferred Options Stage with no significant objections received. Whilst limited weight can be afforded to this policy it is a material consideration.

6.5 Other Material Considerations

- National Planning Practice Guidance
- Meeting Housing Needs SPD

7.0 Comment and Analysis

7.1 The main issues are as follows:

- The principle of development
- Purpose of the condition
- Highway considerations

7.2 Principle of development

The (whole) development site was severed into 2 parcels of land under different ownerships; namely the applicant of this application (Moorfields Corporate Recover LLP for Coast Development NW) and Glory Hole Limited (GHL). The current application comes after the September 2014 appeal decision regarding the legal agreement, whereby the appeal was allowed by the Inspector. There is still a planning condition, namely Condition 21 which is the subject of this current application,, which stipulates that the red-edged site should continue as a care village.

7.3 The applicant only seeks to remove the requirements of the condition in relation to their land only. At the original call-in Public Inquiry, the Inspector recommended that the proposal be supported on the grounds that the development proposed would involve the redevelopment of a large brownfield site that would deliver a specialist and unique form of development which would effectively be self-sustaining. The Inspector acknowledged the limitations of Carr Lane, but concluded that the proposal would result in the redevelopment of a brownfield site, bring derelict listed buildings into use and would enable an enhancement of landscape quality. The Inspector contended that a s106 to control the occupation of the units (along with other terms) and conditions to control the use of the site as a retirement village were necessary and appropriate to achieve a greater degree of sustainability that would make the development acceptable in its rural location. The SoS agreed with the Inspector and granted the planning permission in line with the s106 and conditions set out in the Inspector's report.

7.4 The site remains remote from local services and public transport and is not regarded as being particularly sustainable for new housing on this scale. However, there remains an extant planning permission for residential development, albeit with an occupancy restriction, which is a material consideration that affords significant weight. It is apparent that the site has not developed as envisaged by the Inspector and SoS as a 'unique', self-sustaining settlement. The site now lies partly-developed and in a state of flux and uncertainty with insufficient local services/amenities to be self-sustaining.

7.5 The SoS contended that the terms of the agreement and condition 21 would ensure that the proposed dwellings will continue to be occupied for the lifetime of the development. It is regretful, that we now find this is not the case for the following reasons:

- The terms of the legal agreement only restricted the head of household to be 55+ years of age. It did not indicate that all occupants would be over 55 years of age, meaning families could actually live on the site under the terms of this agreement; and,
- The terms of the legal agreement did not restrict the head of household or any other occupant to be retired (not working).

On this basis, the legal agreement does not truly secure a 'retirement' settlement as originally

envisaged despite its intended purpose. The fact that the Inspector (September 2014) concluded that the legal agreement served no useful purpose is testimony to this. Subsequently, the age restriction has now been removed from the legal agreement in respect of the applicants land. Notwithstanding this, there remains a condition which seeks to control the development as a continuing care retirement village.

7.6 Purpose of the condition

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. Where an application under section 73 is granted, the effect is the issue of a new planning permission. In this instance the applicant seeks to vary condition 21 to exclude the provisions of that condition to their land only – in other words the controls still applies to the remained of the land covered by the extant permission (GHL's land).

7.7 As noted earlier, it was apparent when examining the s106 and conditions for the extant development, there are clear tensions between the two control mechanisms. One of the main areas of concern relates to the lack of definition of a 'continuing care retirement village'. Subsequently, officers have sought Counsel Advice on this matter in order to understand the purpose and effectiveness of the condition originally imposed, particularly given the Inspector has now expected the removal of the age restriction from the legal agreement in relation to the applicants land interest.

7.8 Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:

1. Necessary;
2. Relevant to planning and to the development to be permitted;
3. Enforceable;
4. Precise; and,
5. Reasonable in all other respects.

There is no doubt that the Inspector and SoS at the time in making their decision felt that the separate controls (the s106 and the condition) served a useful and proper planning purpose and that purpose was to secure the unique self-sustaining retirement village. In terms of having the two separate controls, it should be noted that neither the condition nor the obligation has any precedence over the other – they are two legally distinct means of control that both require to be complied with. In this instance the obligation did not provide any definition of what a '*continuing retirement village*' meant and therefore did not assist in interpreting the condition. Consequently, it would appear that the ostensible purpose of the condition appears to have been to clarify what development was permitted. However, it set out no clear restriction on the age or status of all the occupants (e.g. spouse) and did not exclude family (school-age, for example) occupancy. Accordingly, as drafted, the condition does not appear to be sufficiently precise to provide any effective or enforceable method of controlling either the age or status of occupants. On this basis the original planning condition fails the tests prescribed by the NPPF.

7.9 Highway considerations

Officers are mindful that during the recent appeal the Inspector considered that other planning matters that would arise from changing the status of the village to unrestricted housing, such as traffic generation, should be examined through a new planning application or section 73 application. The highway authority share the same opinion, particularly given that their data indicates that unrestricted housing schemes would show peaks in the morning and evening whereas traffic movements associated with retirement housing is most likely to be spread over the day, causing less strain on the highway network. However given that the original planning condition is not precise or enforceable, and fails to achieve the objectives of delivering a genuine retirement village, it is still entirely possible that the housing in question would generate the same peaks and troughs that unrestricted housing schemes elsewhere generate. If the condition had been enforceable and precise (e.g. to genuinely secure occupants to be retired), then any such s73 application could have been accompanied by a transport assessment which would have assessed the changes in traffic generation. This is not the case. On that basis, it is contended that it would be unreasonable and onerous to ask the applicant to provide a Transport Assessment given the conclusions concerning the planning condition.

7.10 In this case the only enforceable control in relation to the extant planning permission, despite best

intentions to condition the development be a retirement village, would be the age restriction set out in the legal agreement. The Inspector understood the Highway Authority's concerns about unrestricted housing in this location, but indicated that with zero possibility of the development ever being completed as 'self-contained' existing residents will have to travel off-site to meet their needs anyway and may still also be in employment anyway (as there is no restriction about the status of occupiers, i.e. retired). The Inspector went on to state that *'in normal circumstances some mechanism for ensuring that age-restricted retired households live in a "continuing care retirement village" would serve a useful planning purpose. However, in the particular circumstances of this case it does not'*.

7.11 Whilst Planning Officers understand the highway authority's concerns, it is contended that as a consequence of the poorly worded legal agreement and conditions, pursuing any highway arguments against the proposal would be difficult to defend. It is on this basis that Members are recommended to remove the condition in its entirety.

8.0 Planning Obligations

8.1 None.

9.0 Conclusions

9.1 This site, and its planning history, is complex. It is a development that was granted planning consent based on exceptional circumstances to deliver a scheme that was unique to the UK at the time and very ambitious. It is regrettable that the scheme has not developed as originally envisaged, and equally disappointing that in all likelihood won't be developed as originally envisaged. The facts seem to rather speak for themselves in that 2 developers have gone into administration and that present landowners are adamant that they will not proceed with the present scheme, as acknowledged by the Inspector in the recent appeal. Officers acknowledge that the circumstances surrounding this case are upsetting and disheartening to existing residents of the development and that the ongoing uncertainty about the planning status of the site has clearly not assisted, while numerous applications have been submitted by the applicant to the Council for consideration. However, it is clear from our ongoing examination of the extant permission and the controls originally imposed, that the terms of the legal agreement and condition 21 are unsuccessful in achieving their objectives. Based on the considerations set out above, Members are advised that the application be supported but rather than varying the condition to remove the effects of the condition from the applicant's land only, that the condition be removed completely.

Recommendation

That Condition 21 attached to planning permission 00/00156/OUT be **REMOVED** and all other conditions remain in force.

Article 31, Town and Country Planning (Development Management Procedure) (England) Order 2010

In accordance with the above legislation, the City Council can confirm the following:

For the reasons stated in the report, this proposal departs from policies within the Development Plan. However, taking into account material considerations which are presented in full in the report, it is considered that on this occasion these outweigh the provisions of the Development Plan, and in this instance the proposal can be considered favourably.

In reaching this recommendation the local planning authority has considered the application as submitted and it is able to conclude that the proposal is one that can be supported.

Human Rights Act

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

Background Papers

Secretary of State's Decision and Inspectors Report.