

Agenda Item A6	Committee Date 8 December 2014	Application Number 14/00789/RCN
Application Site Pontins Holiday Camp Carr Lane Middleton Lancashire	Proposal 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)	
Name of Applicant Moorfields Corporate Recover LLP (Coast Developments (NW))	Name of Agent Mr Trevor Adey	
Decision Target Date 13 October 2014	Reason For Delay Awaiting the Inspectors 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 This application relates to a 0.72ha parcel of land comprising an elongated D-shape around Badgers Wood, which is located within the partly developed Middleton Towers site – the former Pontins Holiday Park which occupied approximately 23 hectares overlooking Morecambe Bay. The site is relatively remote, located approximately 1km west of the village of Middleton and 2km south of Heysham. The wider site is bound by Ocean Edge Caravan Park and Heysham Industrial Estate to the north, with Heysham Power station beyond to the north west. Middleton Sands, which forms part of the Morecambe Bay Special Protection Area, forms the western boundary with flat open fields with a number of caravan site occupying land to the south and east. Access to the site is taken via Carr Lane, a narrow country lane with no pedestrian footpaths or street lighting.
- 1.2 The Retirement Village has only been partly developed (part of the original phase 1) and currently comprises 35 bungalows and 20 apartments arranged along 3 roads, namely Natterjack Lane, Lavender Way and Badger Wood. The administrative and leisure buildings have been developed through the conversion and extension of a Grade II listed farmhouse and barn, which sit adjacent to the Grade II listed tower. The Bowling Green and Pavilion have also been completed. The majority of the wider site however remains undeveloped and is enclosed by secure, solid fencing, with the exception of the site in question.
- 1.3 The application site also contains undeveloped land located predominantly in the southern part of the wider site bound by existing residential and leisure development. This parcel of land is open and vegetated and accessed easily from the existing road network. Land levels are not quite at grade, with a small fall across the site from east to west. Properties to the east of the site consist of a three-storey block of apartments, dropping to single-storey (some with attic accommodation) dwellings, comprising semi-detached and terraced properties. All existing buildings constructed in stone and render with a slate-effect roof tile.
- 1.4 The application site is located within the designated Countryside Area and is allocated as Tourism Opportunity Area under the saved Lancaster District Local Plan. There are no other specific

designations relevant to this application site other than regard to the European designations of Morecambe Bay. The site itself falls within Flood Zone 1, although surrounding land including the access to the site is within Flood Zone 3.

2.0 The Proposal

- 2.1 The proposal is to remove condition 3 on planning permission 13/00265/RCN which seeks to control the occupation of the accommodation to people over the age of 55 years. The stated reason for the imposition of this condition was to maintain the integrity of the development as a retirement village. The applicant has supported this application with copies of their recent appeal submissions relating to their application to vary the legal agreement (13/00805/VLA). Their justification is that the restrictive age condition affects development viability and the prospects of delivery.

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 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 The detailed layout, scale, appearance and landscaping of the site were covered in a reserved matters application in 2005 and later amended by a Section 73 (variation of condition) application in 2007. The site/developer later went into administration. In late 2009, the administrators applied for the erection of 33 dwellings on land at Badger Wood. The application was to form part of the wider development for which permission had been previously granted. This application sought to amend the schedule of accommodation around Badgers Wood resulting in the loss of the apartment block previously permitted. This 2009 permission was renewed early this year (May 2014).
- 3.4 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.
- 3.5 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.
- 3.6 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, leisure, recreation and ancillary administration; creation of a new access and circulation road.	Approved after Call-In by the Secretary of 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
14/00787/VCN	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 applicants land only.	Pending consideration See agenda item A5

4.0 Consultation Responses

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

Consultee	Response
County Highways	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. If approved, the Highways Authority recommends the imposition of a construction management plan.
Parish Council	No comments received within statutory time period.
Policy	No comments received within statutory time period.
Conservation	No comments received within statutory time period.
County Education	No comments received within statutory time period.
ONR (Nuclear Responsibility)	No comments received within statutory time period.

5.0 Neighbour Representations

- 5.1 At the time of drafting this report, only two letters have been received:
- One in support of the application expressing that the age restriction and s106 have prevented development;
 - One letter of strong objection from a resident indicating that the only reason they moved to the village (Middleton Towers) was because it was intended to be a retirement village. This resident also comments that the endless applications submitted by Savills has been very stressful.

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, 61, 64 – 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 sites 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

7.0 Comment and Analysis

7.1 It is contended that the main issue in the consideration of this application is whether the age restriction condition still serves a useful planning purpose and whether the removal of the condition would lead to an unacceptable highway impacts.

7.2 Purpose of condition

The planning history of the site, including more recent events in respect of the recent Informal Hearing appeal, are particularly pertinent to the consideration of this application. The weight that can be afforded to the planning history in the determination of the application is significant.

7.3 The origins of granting consent for 33 dwellings on the application site essentially came from a variation to the reserved matters application consented for the whole site to reduce the number of units and amend the house types on this small parcel of land. It effectively removed an apartment block and replaced it with 2-bedroom bungalows. Full planning permission was granted in 2009 for the 33 dwellings and renewed earlier this year. Both permissions were subject to conditions, including a condition restricting the occupancy to people over the age of 55 years. The reason for the imposition of the condition was to ensure the development did not conflict with the wider consent for a retirement village.

7.4 Since the grant of the renewal permission for 33 dwellings on the Badgers Wood site, the application to vary the legal agreement has been considered and allowed by the Planning Inspectorate. This decision allows the removal of the age restriction in relation to a relatively small parcel of land within the wider site (along with other modifications). For those not familiar with the planning history of this site, the original development site is 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 larger proportion of the site remains in the ownership of GHL where the age restriction set out in the legal agreement still stands.

7.5 For the purposes of clarification, whilst this full planning application for 33 dwellings is not directly tied to the legal agreement, it falls within land covered by the recent appeal decision. Subsequently, it is contended that the Council should consider whether this development with an age restriction is reasonable and necessary given the decision to remove the age restriction on land relating to part of the original approval which covers the same land covered by this application and its immediate surroundings – effectively phase 1 of the original retirement development. The applicant has supported this proposal with the same evidence submitted for their application to vary the legal agreement, which in simple terms argues the age restrictive scheme is unviable and that removing the age restriction would provide greater prospects for the site being developed, albeit not as envisaged as a retirement village.

7.6 The Inspector concluded that the appellant's evidence in respect of viability was convincing and clearly demonstrated that the restrictive scheme would not be viable and would not, in all likelihood, deliver the extant planning permission. Whilst the Inspector acknowledged this would be disappointing for existing occupiers who wish to live in a continuing care retirement village, the obligation (in relation to the appellant's land only) served no useful planning purpose. Subsequently, in light of this recent appeal decision and the viability evidence presented, the retention of the age restrictive condition for this development would be inconsistent with the modified legal agreement in relation to phase 1 and therefore unreasonable in planning terms.

7.7 Highway considerations

The applicant has not provided any supporting information in respect of how the proposal would affect traffic movements associated with the development. Their only reference to highway related matters is in connection with the removal of the requirement for 20% car-free units. It is understood that the Highways Authority have continually objected to the development of the former Pontins site for residential purposes (including the retirement village) on the grounds that Carr Lane has substandard alignment, no footways and the site is remotely located. The SoS when granting the retirement village was not persuaded of the highway objections at that time and granted permission with conditions/obligations the SoS considered would secure a unique, self-contained retirement village which would limit traffic movements along Carr Lane. It is evident that the development has not proceeded as envisaged and from the evidence submitted for the appeal

and contributions to the appeal made by the other land owner, GH, it is highly unlikely the original scheme would ever be built out.

7.8 With regards to whether the conditions/obligations imposed truly did secure the development as originally envisaged is debatable, particularly in relation to the self-contained nature of the proposal and limiting traffic movements. Whilst this is not necessarily related to this application itself (as it is not directly tied to the legal agreement) it is helpful background information. For example, the legal agreement only restricted the head of household to be 55 years – not necessarily retired. Subsequently, under the terms of the legal agreement, the head of household could be working and therefore contributing to daily (peak) traffic movements. Similarly, there is nothing in the legal agreement which would have prevented other occupants within the dwelling being younger than 55 years of age and working or even a family with children, provided the head of household was over 55 years – again all contributing to typical traffic movements associated with unrestrictive dwellings. On this basis, the legal agreement did not really secure a development which would be self-contained keeping traffic movements to a minimum - though there was a condition requiring the development to be a continuing retirement village. There is a separate item on the agenda dealing with the removal of this condition. The requirement for car free units is equally questionable as such an obligation would not have prevented residents from owning cars and parking them on-street. This obligation is imprecise and has now be allowed to be removed by the Inspector. Turning to the site being developed as a self-contained village – this could only truly have happened if the development was built out as a single phase. The obligation allowed there to be 3 phases. Phase 1 commenced but has not been completed. If it had been completed it would have provided a leisure and health club (that do exist) but not the services/amenities essential to secure a self-sustaining development which removed the reliance to travel elsewhere for essential services, such as supermarkets, pharmacies etc. The retail facilities were only ever envisaged at the second phase.

7.9 In this particular case, the development of 33 dwellings on the Badgers Wood site with an age restriction preventing occupation by anybody under the age of 55 years does not control the occupants to be retired. Whilst some people are able to retire earlier than state pension age, it is not an unreasonable assumption that people aged 55 or over may still be working and therefore making several vehicle trips each day as would be expected on unrestricted housing schemes. Taking all this into account, the concerns raised by the Highway Authority, whilst understandable, are not robust enough to defend given the circumstances of the site and the associated planning history. Subsequently, the removal of this condition from this development would not necessarily change the nature of vehicle movements from the site as suggested by the Highway Authority. On this basis, the highway implications associated with this proposal would not lead to severe impacts and as such a refusal on such grounds would fail to comply with the tests set out in the NPPF.

7.10 The highway authority have recommended that if planning permission is granted a construction management plan be imposed to control how construction traffic on Carr Lane will be managed. This is not a condition that has previously been imposed, nor was it a condition previously requested by the highway authority (at the time of considering the renewal application). However, it is not an unreasonable condition particularly given the nature of the local highway network and the fact that the site is partly developed and occupied. There is merit in substituting the dust control condition with a construction management plan condition, which would include dust control measures as well as construction traffic management. This will ensure the construction phases of the development minimise the impact on residential amenity and the highway network. The applicant's agent has agreed with this approach.

8.0 Planning Obligations

8.1 The original application for this development was not subject to a legal agreement. Subsequently no such agreement is required as part of this s73 application.

9.0 Conclusions

9.1 The recent appeal decision concluded the age restriction was a key factor rendering the development of part of the original retirement development unviable and in all likelihood undeliverable. This viability evidence and appeal decision has formed part of our consideration of this application (mainly because it relates to the same land). It is contended, therefore, that there is no reason to take a different view to that of the Inspector in relation to this application. To retain

the age restriction on this development (when it has been removed from the legal agreement in respect of the applicant's other land interests on this wider site), would create an unhelpful and unjustifiable conflict. The reason for imposing the condition in the first place was to maintain the integrity of the development as a retirement village. Firstly, the condition does not secure a retirement village, just an occupier aged 55+ years of age (who could be working) and secondly, the Inspector concluded the age restriction in relation to the applicant's wider site (which includes this site) no longer serves a useful planning purpose. With regards to the highway objections raised, there is no evidence before us in respect of this application to conclude that the development would lead to severe highway impacts as the wording of the condition would not prevent traffic movements usually associated with unrestrictive residential development. On this basis, Members are recommended to support the applicant's proposal to remove the condition.

Recommendation

That Planning Permission **BE GRANTED** subject to the following conditions:

1. Time Limit - 3 years from the date of the renewal permission (15 may 2014)
2. Development to be carried out in accordance with the approved plans
3. Removed
4. Hours of construction
5. Construction management plan – construction traffic management and dust/noise controls
6. Surface water drainage strategy to be submitted and agreed
7. Site Specific Contaminated Land Assessment to be submitted and agreed in writing

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:

Whilst the principle of housing in this location does not fully accord with the provisions of the Development Plan, the planning history and consideration of the merits of this particular proposal, as presented in full in this report, would on this occasion 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 and the applicant have positively and proactively addressed the issues to enable permission to be granted.

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

None