

Agenda Item A8	Committee Date 8 February 2016	Application Number 15/01444/RCN
Application Site Site Of Former Pontins Holiday Camp Carr Lane Middleton Lancashire		Proposal Outline application for the erection of a retirement village comprising dwelling houses and other residential accommodation, retail, leisure, recreation and ancillary administration, and creation of a new access and circulation road (pursuant to the removal of parts xix and xxi of condition 21 on outline planning permission 00/00156/OUT relating to the use of the site as a retirement village and car free design)
Name of Applicant The Glory Hole Ltd		Name of Agent Rachel Wilbraham
Decision Target Date 23 February 2016		Reason For Delay Not applicable
Case Officer		Mr Philip Megson
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 application 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. Part of the site of the retirement village has been built on (Parcel 1). 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.

2.0 The Proposal

- 2.1 The applicant is seeking the removal of parts xix and xxi of condition 21 on outline planning permission 00/00156/OUT from their land only (Parcel 2):

- Part xix: 20% of dwellings shall be car free to be achieved through design at the reserved matters stage.
- Part xxi: The development hereby permitted relates to a continuing care village and no other form of residential development.

2.2 The applicant has submitted a separate application (15/01568/VLA) to remove the relevant obligations on the associated S106 Agreement.

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 (00/00156/OUT) proposed a retirement village. This application was recommended for refusal by Officers, but that recommendation was overturned by Members of the Planning Committee at that 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; provide a Green Travel Plan; and control the use of the site as a retirement village. The Inspector and Secretary of State 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 Subsequent to the granting of planning permission and signing the S106 agreement part of the site was sold. The development of the retirement village would be in two parcels: Parcel 1 (Moorfields Corporate Recovery LLP for Coast Development NW) and Parcel 2 (The Glory Hole Ltd - the original owner).

3.4 Moorfields Corporate Recovery LLP applied to have the effect of the S106 Agreement removed from Parcel 1 of the site in 2013 (13/00805/VLA). The application was not determined and an appeal was held. The appellant succeeded in securing nine amendments to the S106 agreement, including amendment 1, which removed the clause that "*not less than 20% of the total number of units shall be car free*". Moorfields Corporate Recovery LLP also applied to have condition xxi removed from Parcel 1 of the site in 2014 (14/00787/VCN) and also applied to remove condition 3 relating to restricted age occupancy from an extant planning permission for 33 dwellings (13/00265/RENU). Both applications were approved.

3.5 A summary of the relevant planning history is listed below:

Application Number	Proposal	Decision
00/00156/OUT	Outline Application for the erection of retirement village comprising dwelling houses and other residential accommodation, retail, leisure, recreation and ancillary administration. Creation of new access and circulation road.	Approved following call-in by the Secretary of State subject to conditions and S106 agreement.
05/00740/REM	Reserved matters application for retirement village	Approved.
07/00799/FUL	Application for amended details of layout, road and parking layout, landscaping and indicative elevation details as approved by 00/00156/OUT and 05/00740/REM.	Approved subject to conditions.
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).	Allowed on appeal.
14/00787/VCN	Erection of a retirement village comprising dwelling houses and other residential accommodation, retail, leisure and recreation pursuant to the removal of condition xxi on previously approved application 00/00156/OUT.	Approved.

14/00789/RCN	Erection of 33 dwellings (pursuant to the removal of Condition no.3 on previously approved application 13/00265/RENU relating to age restricted occupancy). 13/00265/RENU is a renewal of 09/01188/FUL.	Approved.
--------------	---	-----------

4.0 Consultation Responses

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

Consultee	Response
County Highways Authority	No comments received within statutory timescale.
County Strategic Planning	No comments received within statutory timescale.
County Education	Seeking a contribution of £3,015,721.80 to fund 247 primary places; no contribution to secondary places; and a 1 form entry site primary school site of 1.122 ha.
Parish Council	No comments received within statutory timescale.
United Utilities	No objections subject to conditions relating to foul and surface water drainage.
Office of Nuclear Regulation	No comments.
Fire Safety Officer	The Fire Authority will make a detailed report on fire precautions at building regulation application stage.
Strategic Housing Policy Officer	No comments received within statutory timescale.
Forward Planning Team	No comments received within statutory timescale.
Chief Environmental Health Officer	No comments received within statutory timescale.
Conservation Section	No objections.
Legal Services	No comments received within statutory timescale.

5.0 Neighbour Representations

5.1 At the time of writing one neighbourhood representation has been received in support of the proposed removal of conditions for the following reasons:

- These conditions have been removed from Parcel 1 of the site. Fairness dictates that permission should therefore be given for this adjacent site;
- Removal of these conditions from Parcel 2 of the site will also help to support the existing village and its residents;
- Removal of these conditions will encourage earlier development of brownfield land, which should take precedence over development of greenfield land elsewhere in the City.

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, 115117,118 – Conserving the Natural Environment
Paragraphs 131-133 - Historic Environment
Paragraphs 186, 187, 196, 197, 203-206 – Decision-taking

Lancaster District Local Plan - saved policies (adopted 2004)

E4 – Countryside Area

TO2 – Tourism Opportunity Area

Lancaster District Core Strategy (adopted July 2008)

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

Development Management DPD (adopted November 2014)

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

Emerging Land Allocations DPD

- 6.2 Policies in the emerging DPD are a material consideration, although only limited weight can be attributed to it. Specific to this application is Policy HEY4. 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.

Other Material Considerations

- 6.3 National Planning Practice Guidance
Meeting Housing Needs SPD

7.0 Comment and Analysis

- 7.1 The main issues are the principle of development and the purpose of the conditions.

Principle of Development

- 7.2 The applicant, The Glory Hole Ltd, seeks to remove parts xix and xxi of Condition 21 in relation to their land only (Parcel 2).
- 7.3 At the original call-in Public Inquiry (00/00156/OUT), the Inspector recommended that the proposal for a retirement village 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 Section 106 Agreement (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 Secretary of State 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 the scale originally proposed. 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 the Secretary of State 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 Secretary of State contended that the terms of the legal agreement and part xxi would ensure that the proposed dwellings will continue to be occupied for the lifetime of the development. This is not the case for the following reasons:

- The terms of the legal agreement only restricted the head of household to be, originally 60+ years of age, but later reduced to 55+ years of age through a deed of variation in September 2005. The legal agreement did not indicate that all occupants would be over 55 years of age, meaning families could live on the site under the terms of this agreement;
- The terms of the legal agreement did not restrict the head of household or any other occupant to be retired (i.e. not working); and
- Part xxi of Condition 21 has been removed from Parcel 1 only (14/00787/VCN). This is a material consideration that carries significant weight.

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 Parcel 1.

7.6 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.

7.7 Notwithstanding the above, there remains a legal agreement and condition controlling development on Parcel 2, which seeks to control the development as a continuing care retirement village.

7.8 The clause "*not less than 20% of the total number of units shall be car free*" was removed from Parcel 1 of the site by amendment 1 to the S106 agreement under 13/00805/VLA. In arriving at that decision, the Inspector noted that "*Unfortunately the S106 agreement does not prevent any residents owning vehicles and leaving them parked on the internal private roads (they are not adopted) as such the clause is unsuccessful in achieving its objective...but nothing in the present S106 agreement limits car ownership on the site anyway...This existing element of the S106 serves no useful planning purpose in its current form...*" The clause "*not less than 20% of the total number of units shall be car free*" remains as part of the legal agreement on Parcel 2. A separate application has been made to remove the relevant obligations on the associated S106 Agreement (15/01568/VLA).

7.9 Notwithstanding the above no application was submitted under Section 73 of the Town and Country Planning Act to remove part xix of Condition 21 from Parcel 1. Part xix continues to relate to the whole site.

The Purpose of the Conditions

7.10 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.

7.11 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."

7.12 There is no doubt that the Inspector (through his recommendations) and the Secretary of State (in approving the original 00/00156/OUT development) 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.

- 7.13 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, the ostensible purpose of part xxi of Condition 21 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, part xxi of Condition 21 is not sufficiently precise to provide any effective or enforceable method of controlling either the age or status of occupants. On this basis, it is considered that part xxi of Condition 21 does not meet all the tests prescribed by the NPPF and should be removed from Parcel 2.
- 7.14 Part xix of Condition 21 is not precise because it does not define what is meant by “car free” and is considered to be not enforceable because of the lack of precision of the wording of the condition and that there is nothing to prevent any residents owning vehicles and leaving them parked on the internal private roads. It is concluded that part xix of Condition 21 does not meet all the tests prescribed by NPPF and should be removed from Parcel 2.
- 7.15 Notwithstanding the above, part xix of Condition 21 would still apply to Parcel 1 of the development. While this would create an anomaly, it is considered that part xix of Condition 21 is not enforceable.
- 7.16 The removal of parts xix and xxi of Condition 21 in relation to Parcel 2 is consistent with the Council’s approach set out in Policy HEY4 of the emerging Land Allocations DPD. The delivery of a specialist retirement village as originally envisaged will not happen due to changes secured in relation to Parcel 1 (i.e. removal of age restriction from legal agreement and part xix of Condition 21).

Other considerations

- 7.17 The request for a financial contribution to provide enhanced education provision on the site is not justified in terms of what has been applied for by the applicant, i.e. the removal of two parts of planning condition 21 relating to 00/00156/OUT. The Planning Inspector’s recent appeal decision for the other portion of the wider site explains the unusual circumstances here, and on that basis a contribution is not warranted as part of this particular application. We would however advocate that the applicant engages in formal pre-application submission should they be considering any future reserved matter or full applications.

8.0 Planning Obligations

- 8.1 There is an existing S106 agreement planning permission on 00/00156/OUT. The applicant has submitted a separate application (15/01568/VLA) to remove the relevant obligations.

9.0 Conclusions

- 9.1 Emerging Policy HEY4 in the draft Land Allocations DPD, while supporting the implementation of the existing planning consent, will permit alternative proposals where a retirement village is shown not to be a viable proposal. The recommendation accords with the conclusions of the recent appeal decision.

Recommendation

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

Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

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

Lancaster City Council has made the recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been made having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary

Planning Documents/ Guidance.

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.