

<b>Agenda Item</b> A9	<b>Committee Date</b> 8 February 2016	<b>Application Number</b> 15/01568/VLA
<b>Application Site</b> Site Of Former Pontins Holiday Camp Carr Lane Middleton Lancashire		<b>Proposal</b> Variation of legal agreement on planning permission 00/00156/OUT to remove the age restriction on occupants and the requirements for car-free design, a bus service and use of on-site facilities by on-site residents only, and to vary the requirements for affordable housing provision and its phasing, and the requirements for a Travel Plan
<b>Name of Applicant</b> The Glory Hole Ltd		<b>Name of Agent</b> Mrs Rachel Wilbraham
<b>Decision Target Date</b> 8 February 2016		<b>Reason For Delay</b> Not applicable
<b>Case Officer</b>		Mr Philip Megson
<b>Departure</b>		No
<b>Summary of Recommendation</b>		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. Construction has occurred on Parcel 1 (land administered by Moorfields Corporate Recovery LLP): 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 An application under Section 106A of the Town and Country Planning Act to vary the legal agreement (as amended in September 2005) on planning permission 00/00156/OUT in relation to Parcel 1 only was approved on appeal in October 2014 (13/00805/VLA). The legal agreement (as

amended in September 2005) remains in force on Parcel 2 (land within the ownership of The Glory Hole Ltd). The Glory Hole Ltd has submitted an application to secure amendments to the legal agreement as those secured for Parcel 1, namely:

- Sch.1, para 1: **delete**. Paragraph 1 relates to construction of a maximum of 650 dwellings on the Site (including the residential care home) of which not less than 20% of the total number shall be of ‘car free’ design.”
  - Sch.1, para 2: **insert** new paragraph: “2.8 10% of dwellings must be affordable units”.
  - Sch.1, para 3: **delete**. Paragraph 3.1 requires the head of household to a minimum of 55 years old; and paragraph 3.2 imposes an age restriction on the occupation of the residential care home.
  - Sch.1, para 5: **delete**. Paragraph 5 restricts use of the facilities on the site to residents on the site and residents in the Parish of Middleton via a membership scheme
  - Sch.1, para 6: **delete**. Paragraph 6 relates to the operation of a bus service for 5 years from the occupation of the first dwelling unit.
- 2.2
- Sch.1, para 7: **amend** clauses 7.1 and 7.3 relating to Green Transport Plan to read:  
*“7.1 Within three months of the occupation of any dwelling units to be constructed on Phase 2/3 the Developer shall submit a Green Transport Plan to the Council for the Council’s approval in writing (such approval not be unreasonably withheld or delayed) setting out how it intends to encourage the use of sustainable modes of transport to and from the Development”;* and  
*“7.3 Unless otherwise agreed in advance and in writing by the Council, the owner shall implement all aspects of the Green Transport Plan as approved”.*
- 2.3
- The application as submitted also sought amendments to Sch.1 para.4. The effect of the amendment to Sch.1 para 4 achieved by 13/00805/VLA was to secure a 10% affordable housing contribution from any further housing development on Parcel 1. A 10% affordable housing contribution already applies to Parcel 2. No change is required.

2.4

The applicant has submitted a separate application (15/01444/RCN) to seek the removal of conditions xix and xxi on outline planning permission 00/00156/OUT from Parcel 1.

### **3.0 Site History**

3.1

The legal agreement on planning permission 00/00156/OUT was amended by a Deed of Variation in respect of lowering the age of the Head of the Household from 60 years old to 55 years old in September 2005. References in this report to “the agreement“ in this report refer to the legal agreement as amended in September 2005.

3.2

Relevant site history is set out below:

<b>Application Number</b>	<b>Proposal</b>	<b>Decision</b>
<b>00/00156/OUT</b>	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.
<b>05/00740/REM</b>	Reserved matters application for retirement village.	Approved.
<b>07/00799/FUL</b>	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
<b>13/00805/VLA</b>	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 (ref APP/A2335/Q/14/2211913).
<b>14/00787/VCN</b>	Erection of a retirement village comprising dwelling houses and other residential accommodation, retail, leisure and recreation pursuant to the removal of	Approved.

	condition xxi on previously approved application 00/00156/OUT.	
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:

<b>Consultee</b>	<b>Response</b>
<b>Parish Council</b>	No response within statutory timescale.
<b>Legal Services</b>	No comments
<b>Office of Nuclear Regulation</b>	No comments: the site does not lie within a consultation zone around a GB nuclear site.
<b>Planning Policy</b>	No response within statutory timescale.
<b>Strategic Housing Policy Officer</b>	No response within statutory timescale.
<b>County Highways</b>	No response within statutory timescale.
<b>EDF Energy</b>	No response within statutory timescale.

#### **5.0 Neighbour Representations**

5.1 At the time of writing, no neighbour representations have been received.

#### **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**

Policies in the emerging DPD are a material consideration. 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. Whilst limited weight can be afforded to this policy it is a material consideration.

### Other Material Considerations

National Planning Practice Guidance  
Meeting Housing Needs SPD

## **7.0 Comment and Analysis**

- 7.1 The primary consideration of this application is whether or not the existing obligation serves a useful planning purpose. To determine this, consideration is paid to the nature of the approved development and the implication of the applicant's proposal on each of the obligations set out in the original Agreement.
- 7.2 S106A of the Town and County Planning Act 1990 states:-  
(1) A planning obligation may not be modified or discharged except –  
a. by agreement between the appropriate authority and the person or persons against whom the obligation is enforceable; or  
b. in accordance with this section and section 106B.
- 7.3 Sub-paragraph 3 of S106A, states that a person whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the appropriate authority for the obligation-  
a. to have the effect subject to such modifications as may be specified in the application; or  
b. to be discharged.
- 7.4 Sub-paragraph 6 of S106A, states that where an application is made to modify the Agreement, the authority may determine:-  
a. that the planning obligation shall continue to have effect without modification;  
b. if the obligation no longer serves a useful purpose, that it shall be discharged; or  
c. if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- 7.5 The applicant, The Glory Hole Ltd, seeks a Variation of Legal Agreement relating to "the agreement" in relation to land within their ownership (Parcel 2) to amend or remove clauses as described in Section 2 of this report. These changes already apply to Parcel 1 by virtue of the approval of 13/00805/VLA following an appeal. The approval of 13/00805/VLA is a material consideration carrying significant weight in dealing with the current application.
- 7.6 Change sought: Schedule 1, paragraph 1: delete. This paragraph of "the agreement" relates to the scale of development. It required no more than 650 units to be constructed on site, of which not less than 20% should be car free. The original planning permission states the total number of dwellings and paragraph 4 of the agreement also provides sub-totals of dwellings for each phase. The number of dwellings remains subject to control. "The agreement" does not prohibit any residents owning vehicles and leaving them parked on the internal private roads (they are not adopted). As such the Inspector concluded that the clause is unsuccessful in achieving its objective. Schedule 1, paragraph 1 has been deleted from Parcel 1. It is considered that this element of "the agreement" should also be removed from Parcel 2.
- 7.7 Change sought: Schedule 1, paragraph 2: insertion of additional clause: "2.8. 10% of dwellings must be affordable units." Paragraph 2 of "the agreement" includes seven clauses in relation to affordable housing, but none of the clauses includes a trigger for the delivery of affordable houses. As such,

90% of the site as a whole (Parcels 1 and 2) could be developed for market housing. This clause was added by the Inspector to ensure that 10% of the housing delivered in Parcel 1 would be affordable housing would be delivered in Parcel 1 (13/00805/VLA). Notwithstanding that Policy 41 of the Development Management DPD would normally seek a 30% affordable housing contribution, a 10% affordable housing contribution is justified on the basis that a precedent has been set through the approval of a variation in the legal agreement on Parcel 1). It is considered that the additional clause “2.8. 10% of dwellings must be affordable units” should be added to “the agreement.”

- 7.8 Change sought: Schedule 1, paragraph 3: delete 3.1 and 3.2. Clauses 3.1 and 3.2 of the agreement imposed restrictions by age on the occupancy of the dwellings and the care home respectively. These “shall not be occupied by households whose head of household is less than 60 years old”. This was changed by a Deed of Variation to 55 years old in September 2005. The Inspector noted that only one person in a household would have to be 55 or older to meet the age restriction clause and that all members of the household could be travelling to work, school or college from the site. The Inspector concluded that “The S106 does not appear to ... restrict occupants of the scheme to retired households competently”. Poor drafting of the agreement has resulted in the age restrictions serving no useful purpose and have been removed from Parcel 1. It is considered that this element of “the agreement” should be removed from Parcel 2.
- 7.9 Change sought: Schedule 1, paragraph 5: delete. This paragraph restricts the use of onsite leisure facilities to residents of the site and the parish of Middleton. The Inspector accepted that the onsite leisure facilities were not viable with the restricted membership and concluded that “there is no realistic alternative but to permit a wider user base in order for the facilities to remain open”. As the leisure facilities are situated in Parcel 1, it is considered that this element of “the agreement” is not relevant to Parcel 2 and should be deleted.
- 7.10 Change sought: Schedule 1, paragraph 6: delete. This clause required a minibus service, subject to various criteria such as times, routes and destinations, but only for a period of 5 years from the occupation of the first dwelling unit, rather than the lifetime of the scheme as might be expected. The 5 years period from the occupation of the first dwelling has elapsed. This element of “the agreement” has been removed from Parcel 1. It is considered that this element of “the agreement” serves no useful purpose and should be deleted from Parcel 2.
- 7.11 Changes are sought to paragraphs 7.1 and 7.3 of Schedule 1. The existing clause in “the agreement” required the submission of a Green Transport Plan prior to occupation of the first dwelling. In respect of Parcel 1, a Green Transport Plan was not submitted and the Council did not pursue enforcement action. The Inspector recommended an amended clause which requires the submission of a Green Transport Plan and the owner to implement all aspects of the Green Transport Plan. The changes already have effect in Parcel 1. In respect of Parcel 2 it is proposed to delete the existing wording in paragraphs 7.1 and 7.3 and substitute with the new wording in Section 2 of the report. It is considered that the changes to the wording are acceptable.

## **8.0 Planning Obligations**

- 8.1 The above section of the report sets out the applicant’s proposed amendments to the existing agreement. For the reasons stated in the report the following amendments are accepted:
- Sch.1, para 1: delete;
  - Sch.1, para 2: insert new paragraph “2.8. 10% of dwellings must be affordable units”;
  - Sch.1, para 3: delete 3.1 and 3.2;
  - Sch.1, para 5: delete;
  - Sch.1, para 6: delete; and
  - Sch.1, para 7: amend clauses 7.1 and 7.3 relating to Green Transport Plan.

## **9.0 Conclusions**

- 9.1 The former Pontins site is divided into two land ownerships. The owner of part of the site (Parcel 1) secured amendments to the S106 agreement in 2014 (13/00805/VLA). The purpose of the current application is to secure the same changes to the S106 agreement in respect of Parcel 2 that have been achieved on Parcel 1. The approval of 13/00805/VLA is a material consideration carrying significant weight in dealing with the current application. It is concluded that, for the reasons set out in the report, the elements of the planning obligation referred to serve no useful purpose. It follows

that the relevant clauses should be amended or deleted as stated in the report.

### **Recommendation**

In accordance with S106 (A) of the Town and Country Planning Act, Officers recommend that the proposed application to modify and discharge the terms of the original agreement in relation to the applicant's land only can **BE GRANTED**.

### **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