REF. NO. X/13/72533

PLANNING APPLICATION REPORT

DESCRIPTION/ ADDRESS	-	Variation of conditions 3 & 4 of planning permission Z/31620/001 to allow the retention of an existing double garage to be used ancillary to mobile home by gypsies or travellers Little Acre Allington Lane West End Southampton SO30 3HP

SITE VISIT DATE – 24/5/2013

ARE PLANS ACCURATE? - Yes

HAVE ALL NECESSARY NEIGHBOURS BEEN CONSULTED? - Yes

THE SITE AND ITS SURROUNDINGS

DESCRIPTION OF APPLICATION	The application proposes to vary conditions 3 and 4 of Planning permission Z/31620/001. That application gave permission for the construction of a double garage. Conditions 3 and 4 of that permission state: 3) The garage hereby permitted shall only be used by Mrs Amanda Barney and/or Mr Reuben Barney in association with and ancillary to the existing residential mobile home on the site and shall not be used by any other persons for any other purpose. 4)When the existing residential mobile home at the site ceases to be occupied by either or both Mrs Amanda Barney and/or Mr Reuben Barney, the garage hereby permitted shall be removed and the site restored to the satisfaction of the Local Planning Authority within 6 months. The applicant wishes the garage to be capable of use by gypsies and travellors generally as opposed to the current owner of the land (Mrs Heathorn nee Barney). The application is submitted concurrently with planning application X/13/72534 which is for variation of conditions 2 and 3 of application Z/31620/002 to allow use of the mobile home by gypsies and travellors generally as opposed to the current owner of the land.
SITE AREA	0.19ha
RESIDENTIAL DEVELOPMENT DENSITY (NET)	n/a
TOPOGRAPHY	The site is generally level
TREES	Several mature trees adjacent to the s/w boundary both within and adjacent to the site. One semi mature tree adjacent to front boundary and vehicular access to the site
BOUNDARY TREATMENT	2m cbf on n/e boundary. S/w and n/w boundary timber post fence of 2m in height. Front boundary 1.8m (approx) brick and pier wall.

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THE SITE AND ITS SURROUNDINGS

SITE CHARACTERISTICS	The site currently comprises a rectangular plot of land with a detached double garage with room in the roof and a smaller brick building possibly for the accommodation of animals. Neither of these buildings currently seem to be use. At the centre of the site is a gravelled area some of which appears to have been dug up and remains in an unfinished state. The site is accessed from Allington Lane via an access point located midway along the front boundary.
CHARACTER OF LOCALITY	The site is located within the designated countryside. To the rear (north west) is Seddul Bahr industrial estate. A plot of land to the side (north east) of the site also appears to form part of this industrial estate however there are no buildings on that part of the land. Beyond that and the access road into the industrial estate is a residential bungalow West Point with a serious of single storey outbuildings. To the other side of the site (s/w) is White Harmony Acres Industrial Estate upon which is a mobile home and a number of outbuildings and industrial buildings slightly further south west. A number of other dwellings are dotted along Allington Lane. On the other side of the road are open fields which appear to belong to Oaklands Farm.

RELEVANT PLANNING HISTORY

REFERENCE	DESCRIPTION	DECISION
E/31620	Enforcement notice served in respect of stationing of mobile home, concrete base, brick skirt and steps and formation of hard standing.	Appeal against enforcement notice allowed December 1991. Conditions attached making use personal to applicant Mr and Mrs Barney and requiring removal when mobile home ceases to be occupied by Mr and Mrs Barney. No reasons were given in the decision why these conditions were applied.
Z/31620/001/00	Construction Of Double Garage	Permitted 22/02/1996
Z/31620/002/00	Construction Of Concrete Base And Re-Siting Of Approved Mobile Home Under Appeal Decision Dated 10 Dec 1991	Permitted 01/07/1999
Z/31620/003/00	Retention Of Front Boundary Wall And Dog Kennel	Permitted 11/05/2000
X/13/72534	Variation of conditions 2 and 3 of planning permission Z/31620/002 to allow occupation of the mobile home by gypsies and travellers	Under consideration

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT

REF. NO. X/13/72533

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT
None received	

CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
HPP	No objection: Given the use of this site by the current occupier as a gypsy, permitting this variation of conditions for use by the gypsy and traveller community in general is unlikely to have no greater impact. The current occupier appears to have no special or unique needs beyond those of the general gypsy and traveller community and it would be unreasonable to retain the condition for use by said person only. In addition, a condition of use for the gypsy and traveller community would prevent the loss of a site from the pool of sites for this use and would go toward meeting needs for gypsy and traveller accommodation. On the grounds stated above, there is no policy objection to the variation of conditions in these applications.

POLICY CONTEXT

DESIGNATION APPLICABLE TO SITE
Outside Built-up Area Boundary Within Established Residential Area Special Protection Area-recreational disturbance zone

DEVELOPMENT PLAN SAVED POLICIES, EMERGING LOCAL PLAN POLICIES AND SPD'S

Eastleigh Borough Local Plan Review (2001-2011): 59.BE, 1.CO (Countryside), 18.CO (protection of the landscape), 20.C0 (Proposed Landscape Improvements), 87.H (Gypsy sites)
Pre submission Eastleigh Borough Local Plan 2011-2029: DM1, S8, DM30

NATIONAL PLANNING POLICY GUIDANCE

Circular 11/95: Use of conditions in planning permission
National Planning Policy Framework
Planning policy for traveller sites Policy H: Determining planning applications for traveller sites

POLICY COMMENTARY

The above policies and guidance combine to form the criteria against which this application will be assessed with particular regard to the character of the area, equal access to homes, highway safety and the countryside.

COMMENT ON CONSULTATION RESPONSES

No comments

COMMENT ON REPRESENTATIONS RECEIVED

None recieved

PLANNING OBLIGATION/CONSIDERATIONS

n/a

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

> *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

Planning policy for traveller sites states at paragraph 4 that the Government's aims in respect of providing fair and equal treatment for traveller sites include "to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites" and "to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure". Paragraph 10 states that where there is no identified need for gypsy and traveller accommodation, applications should be assessed against criteria-based policies.

Circular 11/95 provides advice in respect of the use of conditions and notes in paragraph 92 that "conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission." Paragraph 93 gives advice in respect of personal permissions noting these are seldom desirable and used only when there are strong compassionate or other personal grounds for doing so.

Background

This application is not for the erection of a garage. This structure is already on site and in use by a named gypsy following planning permission Z/31620/001/00. The current application seeks to vary conditions 3 and 4 which restricts the use of the garage to a named person so that any Gypsy occupying the mobile home can also use the garage. The conditions also require the removal of the garage should the mobile home ceases to be occupied by named persons.

Abandonment

The mobile home to which the garage would be ancillary is not currently on the site and has according to the supporting statement submitted by the agent, not been on site for about two years. The issue of whether abandonment of the residential use of the site has occurred needs to be considered as without the lawful use of the mobile home, the garage may be in breach of condition 4 of Z/31620/001/00. this issue is considered in depth as part of the assessment of planning application X/13/72534 (mobile home) however it concludes that in this case, the removal of the mobile home from the site should not in itself be considered an indication of abandonment noting that gypsies lifestyle includes travelling. Having researched case law in such case abandonment was not considered to have occurred even after 40 years of not using the site for residential purposes. It is clear from the current application that the intention is for site to remain in residential use. No new use has been introduced on the site and although the residential unit which is the mobile home, has been removed from the site this does not indicate that it has deteriorated or can not continue to be used for residential purposes. Most notably in case law a three year intermittent use of a mobile home was not considered to be abandonment in Eastleigh. Overall therefore looking at the circumstances of the case against the tests of abandonment, the removal of the mobile home from the land for a period of two years is not considered to be an abandonment of the lawful use of the site.

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ASSESSMENT OF PROPOSAL

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Assessment

The key issue that this application revolves around is whether the use of the garage ancillary to the mobile home needs to be tied solely to one gypsy, namely Mrs Heathorn, or whether any person within the gypsy community that is occupying the mobile home can use it. Looking at the guidance set out in Planning Policy for Traveller Sites paragraph 4 states that the Government's aims of providing fair and equal treatment for traveller sites includes enabling provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. The use of the garage would allow dry and safe storage of a private motor car and could be argued to support access to services and facilities. The use of the garage by any persons in the gypsy community where they are occupying the mobile home on site would assist in ppening up the use of the site for gypsies generally would make it more flexible to meet local need and would be in accordance with paragraph 4 of the guidance. Policy H at paragraph 22 states that in assessing applications local connections should not need to be demonstrated and also advises that existing local need should be considered. The last assessment for gypsy and traveller accommodation that is accepted by the LPA as an accurate reflection of need was carried out in 2006 as part of the Gypsy and Traveller Accommodation Assessment (GTAA) which covered the period between 2006 and 2011 for Hampshire, Southampton, Portsmouth and the Isle of Wight. The needs identified for gypsies and travellers in this borough in the 2006 GTAA have been met by permissions for gypsy accommodation granted since 2006. Although work is in progress with other authorities to update to the 2006 GTAA, as the need identified for gypsy and traveller sites in the 2006 GTAA has been met through permissions, the Council has concluded that the criteria based policy offers the best mechanism for meeting needs and allowing flexibility to take opportunities as they arise. It is noted that a more recent survey has been carried out for gypsy and traveller needs in the county however this has not been commissioned by the authority and it its methodology and findings have not been assessed to date to consider whether they are an accurate reflection of need.

Saved policy 87.H provides criteria against which applications for gypsy and traveller sites should be assessed. As noted above this application is not for a new garage but rather for the use of the garage by any persons within the gypsy community that are occupying the mobile home. It makes no changes the existing permission other than on this one point. Nevertheless the criteria listed in that policy against which applications should be assessed is that the site should be within a reasonable distance of schools, medical services, shops and other facilities, they should make appropriate provision for access and parking and they should not have an unacceptable impact upon the character or appearance of the countryside. In terms of the appearance of the garage, the building has on site for several years and now constitutes the character of the area at this point. The proposed variation of conditions will not affect this. The site has sufficient space within it to accommodate vehicles that would arise from the use of the mobile home and the use of the garage by any persons within the gypsy community will not affect this. Finally the policy requires that sites are located within a reasonable distance from facilities. The proposed variation of conditions to allow use by the wider gypsy community does not affect this.

Policy DM30 of the Eastleigh Borough Council Local Plan Pre Submission (2011 - 2029) is also relevant albeit having limited weight noting the status of that draft plan. This policy has similar criteria to 87.H however also requires the site can be provided by public utilities, have access to and from a strategic road network and the site should not dominate the nearest settled community. The proposed use of the garage by gypsies in general that are occupying the mobile home would not be contrary to the aims of that policy.

Whilst the varying of condition would allow the wider use of the site amongst the gypsy community

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

and support the availability of pitches in this respect, the site is not however suitable for occupation by those outside the gypsy community. Residential requirements for other groups would be directed to housing within defined settlements. In order to secure this a condition is attached which limits the use of the site to gypsies only.

For these reasons the proposal is considered to comply with relevant Development Plan policies.

OTHER MATERIAL CONSIDERATIONS

Also of relevance is the pre-submission Eastleigh Borough Local Plan 2011-2029. While not yet adopted it does carry weight by virtue of being intended as the current local plan's replacement. With regards to this application, the new policies essentially echo those of the current plan and are not considered to affect the recommendation put forward.

CONCLUSIONS

The recommendation is to permit.