REPORT UPDATE

Application No: WA/1/10/

Reason for the Update / Changes

Reason for Update/Changes:
A copy of minutes for Walberton Parish Council meeting dated 16th February 2010 where it states that whilst Parish Council cannot withdraw originally objection dated 19th january 2010 it formally records that it does not wish to pursue its objection and support the applicant's stay on the site.

Officers Comment:
Comments noted.

Notes: Changes to recommendations, conditions and / or reasons for refusal will always be reflected in the recommendation section of the attached Officer's Report/Recommendation.

WA/1/10/

PLANNING APPLICATION REPORT

REF NO: **WA/1/10/**

LOCATION: Dragonfly Paddocks
Eastergate Lane
Walberton

PROPOSAL: Continuation of use of land as a single caravan plot (Departure from the development plan)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	In addition to the stationing of a caravan the application seeks consent for the retention of a wooden L-shaped flat roofed store building measuring 2.8m high X 9m long and two lorry containers measuring 2.8m high X 5m long. Occupation of caravan is by a Gypsy family.
SITE AREA	1 acre
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	2 metre close boarded fence along south boundary

	supplemented by trees/bushes on Eastergate Lane side. Post and two rail fence interspersed with Leylandy trees along west, north and east boundaries (south east corner composed of 1.8m high close boarded wooden fence).
SITE CHARACTERISTICS	Open countryside with an area of vehicle hardstanding north of which there is a square area of amenity space measuring 67m X 47m. The caravan and buildings are located abutting the south of the site adjacent to Eastergate Lane.
CHARACTER OF LOCALITY	Rural with intermittent buildings accessed off Eastergate Lane.

RELEVANT SITE HISTORY

WA/78/95	Stables and barn	Approve Cond 01-03-1996
WA/33/96	Conversion of redundant barn to dwelling	Approve Cond 11-06-1996
WA/40/98/	Conversion of existing barn into domestic dwelling (amendment to WA/33/96)	Approve Cond 09-10-1998
WA/85/03/CLE	Application for a Certificate of Lawfulness for an exisiting use of barn conversion for living accommodation	Refused 27-08-2004
WA/101/04/	Change of use to holiday let accommodation/ dwelling	Approve Cond 16-02-2005
WA/48/07/	Change of Use of Land to allow siting of 12 Timber Holiday Lodges (Departure from Development Plan)	Refused 01-08-2007 **Appeal: Dismissed 13 05 2008**
WA/12/82	Erection of one farm bungalow	Refused 07-04-1982
WA/19/83	Construction of farm bungalow	Refused 08-06-1983
WA/63/83	Stationing of mobile home	Approve Cond 31-08-1983
WA/71/85	Construction of one farm house	Approve Cond 04-12-1985

REPRESENTATIONS

Representations received:

Walberton Parish Council

Parish Council representation:
Objection. Whilst the Parish Council has some sympathy with the applicant and the needs of their children this site is not included within the recommended gypsy sites agreed by the Council in their Cabinet Report dated 21st December 2009.

Other representations:
1 objection
Original plans were not a true reflection of what was on site. What is the relationship of containers and outhouse? Application does not allege a change of use of the land. Will the site be used for stabling horses and does she take children when travelling to horse fairs.

3 No objections
No objection from immediate neighbours to the continued occupation of the land by the applicant and family. A restriction should be placed that no permanent residences, further caravans, extensions to existing caravans, nor its relocation be permitted.

Comments on Representations received:

Comment on Parish Council representation:
The site did not feature in the Council's list as it was never considered for gypsy accommodation.

Comment on other representations:
Controlling conditions will be imposed to restrict the number and location of caravan. Application form is wrong in claiming that this is not a change of use of the land. Any stabling of horses can only take place without permission if it is ancillary to the use of the caravan as a residence. family arrangements when travelling to fairs are not material planning considerations.

CONSULTATIONS

WSCC Local Development Divis.
Southern Water Planning
Environment Agency

Consultations responses received:

Environment Agency
No comment as caravan is not located in a flood zone.

County Highways
Advice. Given the length of time the use has in operation without any adverse comments no significant highway issues are foreseen.

Arun Licensing Officer
Subject to conditions no objection.

Comments on Consultation responses:

Comments noted.

POLICY CONTEXT

Designation applicable to site:
Outside Built Up Area Boundary

DEVELOPMENT PLAN POLICIES

South East Plan:		
Arun District Local Plan:	GEN2	Built-up Area Boundary
	GEN3	Protection of the Countryside
	GEN7	The Form of New Development

PLANNING POLICY GUIDANCE

PPS1	Delivering Sustainable Development
PPS3	Housing
PPS7	Sustainable development in rural areas

POLICY COMMENTARY

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to the issue of principle, impact on the open countryside and the personal circumstances of the applicant.

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."

The proposal is considered to conflict with relevant Development Plan policies in that the site lies in a countryside location outside the built up area boundary. The proposal is unrelated to agriculture, forestry or other acceptable countryside uses.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background in that it is accepted from the information submitted that the applicant is a member of the gypsy/traveller community where there is a proven need for the applicant to continue living on the site for a temporary basis pending the formal identification and allocation of suitable permanent sites for gypsies and travellers within the District through the Local Development Framework process.

CONCLUSIONS

Background:
The site lies outside of any Built-up Area boundary in an area classed as open countryside. Strict planning policies apply in such areas to protect the countryside for its own sake. The provision of residential development (including mobile homes) in the countryside is generally not permitted unless it is in connection with a genuine agricultural or forestry need. The proposal the subject of this application is therefore contrary to the provisions and policies of the development plan.

The above notwithstanding, Circular 01/2006 (ODPM) Planning for Gypsy and Traveller Sites is

the most recent policy statement the Government has produced on such planning matters and is material to the determination of the current planning application. It requires that:
- Local Authorities should identify suitable sites for Gypsy and Travellers in their Development Plans, either through site allocations within the Local Development Framework (LDF) or the granting of planning permission to acceptable 'windfall' proposals. It is not acceptable to just identify criterion of where sites could be allocated without identifying specific sites to begin with. Sites identified must also be seen as sustainable and in the first instance look to larger settlements with good facilities and services;
- Local Authorities must have fair, reasonable and realistic site selection criteria which will be effective in delivering sites - thus giving certainty to applicants and local residents and reducing the need for Local Authorities to enter into lengthy and expensive enforcement actions against unauthorised sites;
- Gypsies and Travellers must be covered in a housing need assessment (under the Housing Act 2004, all local housing needs assessments must take into account the needs of Gypsies and Travellers, including legal sites to station their caravans). An explanation of the identified needs (permanent and transit) must then be translated into the new spatial planning system through allocations in the planning (LDF) process.

The Circular aims to increase the number of authorised camp sites for Gypsies and Travellers across the country by ensuring Local Planning Authorities identify and make provision for the accommodation needs for such communities within their Development Plans.
The Housing Act 2004 imposes a duty on Local Authorities to carry out a housing needs assessment of Gypsies and Travellers in their District through Gypsy and Traveller Accommodation Assessments (GTAAs) and to identify appropriate sites that are suitable and realistically available to meet that need through the emerging Local Development Framework (LDF).

The main issues to be considered in this application are:
- whether there are material considerations that justify allowing the development of this site contrary to the applicable policies in the development plan, which could include;
- the Gypsy status of the applicant
- the proven need for a Gypsy site
- the personal circumstances of the applicant
- whether or not the use of the land as a private gypsy caravan site would cause material harm to the character and appearance of the area;
- the availability of adequate infrastructure to serve the site by way of highway safety, access to services and facilities; and
- other material considerations, such as impact on residential amenities, traffic noise, land contamination, landscaping, etc.

For Members information and clarification, the definition of Gypsies and Travellers is listed at paragraph 15 of ODPM Circular 01/2006, being:
"Persons of a nomadic habitat of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such."

Beyond these material considerations are the matters relating to Human Rights legislation. Having considered the harm that may be caused to acknowledged planning interests, together with the

interference with the human rights of the applicant, a recommendation based on the need to balance the proportionality of the harm to the environment against the Human Rights of the applicant will need to be reached in respect of this application.

Travellers' rights under Article 8 of the European Convention on Human Rights 1950 should also be taken into consideration in such cases where refusal of planning permission/enforcement action would involve eviction of persons from their homes when there is no alternative site available. The specific impact on individuals in the applicant group in relation to health and educational issues also have to be taken into account.

It is of importance to note that the applicant is presently living on the site in question so the refusal of planning permission would potentially lead to the need for enforcement action to be considered which could eventually lead to the applicant being required to vacate the land.

Gypsy, Traveller and Travelling Showpeople Sites Study:
In October 2008, an independent study was undertaken on behalf of the Council by Planning Consultants, Baker Associates, to assess sites in Arun District Council, West Sussex County Council and other ownership (including private) to develop a shortlist of potential Gypsy, Traveller and Travelling Showpeople sites to meet identified needs (hereafter referred to as the Baker Report).

The study was also intended to develop a criteria based spatial planning policy approach for the location of such sites and to provide advice on how consultation can best be undertaken. The report was published earlier this year and was out to public consultation between February 2009 - April 2009.

The Baker Report is an independent study that was commissioned to assist the Council in identifying permanent sites for the gypsy and traveller community to meet accepted and identified local needs. In reaching their conclusions, the planning consultants applied key suitability criteria, together with an initial investigation of likely availability.

The report did not identify the application site as a potential site and although it has been through a proper and thorough public consultation exercise it is considered that it can only be given limited weight at this stage as a material planning consideration in the determination of this application. Nevertheless, it is important to ensure that any decisions taken in respect of current applications for G&T sites avoid prejudicing the important process that will go towards the identification of permanent sites for gypsies and travellers within the District and the potential delivery of such sites through the Local Development Framework.

Principle:
As noted, the site lies outside of the Built-up Area Boundary in an area where the Countryside should be protected for its own sake and special justification would be required for any new development to take place. The proposal the subject of this application is unrelated to agriculture or forestry.

The above notwithstanding, it has been openly accepted by the Council that there is a proven need for some additional permanent Gypsy and Traveller accommodation throughout the District. The County currently operates 10 sites, with 105 pitches. Consultation with West Sussex County Council has revealed that there are presently no suitable vacancies within local West Sussex

County Council sites.

In accordance with the requirements as set out in ODPM Circular 01/2006, the Council has conducted a Gypsy and Traveller Assessment Audit (GTAA). The draft results indicated an unmet net need for an additional 9 permanent pitches within Arun District for the period 2006 to 2011. However, this has recently been updated at the Regional level such that there is now an agreed need for between 14 and 18 additional permanent pitches within Arun's boundaries for the period from 2006 to 2016.

The agreed immediate unmet need, therefore, for additional G&T pitches within the District is 9. Temporary permissions have recently been granted for additional pitches at Patching woodyard, Patching, The Paddocks in Northfields Lane, Aldingbourne and at Coventry Plantation in Findon which fully meet this requirement in strictly numerical terms. However, it should be noted that these are not permanent allocations and are private sites that would not be available to the applicant in this case.

The Baker Report makes it clear in Paragraph 6.3 that:
"Since the majority of the sites which we consider are suitable are subject to temporary permissions we believed that there is an opportunity for the Council to consider these sites collectively through the development management process in the short term. Given the scale of need identified in the West Sussex GTAA up to 2011, we consider that these sites have the capacity to meet this short term need. This would prevent the need for any further temporary permissions to be granted and would provide the appropriate evidence for future development management decisions."

Following the publication and consultation of the report the Council has decided at its Cabinet meeting dated 21st December 2009 to undertake discussions with West Sussex County Council the owners of Angel's Nursery, Barnham to provide a Gypsy and Traveller site and to commence work on a Development Plan Document to identify sites for the long term. Therefore given the advanced stage that the Council has reached in respect of identifying permanent sites to meet its identified need to 2016, it is considered it would be premature to grant permanent permission for gypsy & traveller development on this site before the Council has completed the above work.

Nevertheless, it must also be duly recognised that the site is presently occupied and there are currently no other sites available for the applicant to move to should permission be refused. Careful consideration should therefore be given to the possibility of granting a temporary and personal permission to the applicant in accordance with the advice on transitional arrangements as set out in Paragraphs 41 to 46 of ODPM Circular 01/2006.

It is accepted that the applicant is of gypsy status as per the current definition in Paragraph 15 of ODPM Circular 01/2006. The site is currently occupied and contains one caravan mobile home. The current application has been submitted in response to a development compliance investigation. The application needs to be assessed against the relevant development plan policies, but the guidance contained in Circular 01/2006 and the findings of the GTAA and the identified Baker report allocation are, of course, significant material planning considerations that also need to feed into the overall assessment.

The applicant is seeking retrospective permission for the use of this site for settled gypsy and traveller accommodation together with ancillary works. Whilst there is a demonstrable need for

additional permanent pitches for gypsy and travellers within the District for the period to 2016 (as evidenced through the GTAA), it is considered the identified need for nine additional pitches for the period 2006 to 2011 can already be met through existing temporary allocations for which the Council has granted planning permission. However, it is of importance to note that the applicant is currently living at the site in question. Accordingly, if the Council were minded to refuse this particular application it is considered such a decision would have a significant impact on their basic Human Rights by denying them a place of abodeand potentially resulting in their eviction from an existing site with no suitable alternative sites presently being available - pending the formal allocation of permanent sites for gypsies and travellers through the LDF process. The process of allocating such permanent sites is, however, gathering pace and it is therefore considered it would be prudent, in this case, to grant an eighteen month temporary and personal permission to the applicant which would enable them to continue inhabiting the site whilst further progress is made by the Council in respect of meeting the longer term need for pitches within the District.

Personal circumstances and local connections:
In deciding this application, some consideration must be given to whether the acknowledged planning harm is outweighed by the damage and interference with the applicant's personal circumstances. Any decision-maker has a duty to carry out a balancing exercise and give reasons for their decision.

The Human Rights Act 1998 stipulates that the following European Convention rights are considered relevant to planning applications submitted by Travellers and/or Gypsies:
Article 8 - Right to respect for provide and family life, home and correspondence;
Article 14 - Right to protection as a minority people group;
The right to education under Article 2 may also be relevant in some cases.

Planning Policy Statement 1, ODPM Circular 01/06 and case law indicate that personal circumstances are capable of being material considerations. In this respect, the test of proportionality needs to be applied to the personal circumstances of the applicant(s) in respect of harm caused on planning grounds against the harm caused to their Human Rights. Nevertheless, the Human Rights of those living within the nearby settled community must also equally be considered. Paragraph 62 of Circular 01/2006 makes it clear that:
"Local planning authorities should not refuse private applications solely because the applicant has no local connection."
The starting point in considering any application for a gypsy and traveller site is therefore very clear and the question that needs to be asked by the Committee is whether there is an identified need within the District for gypsy and traveller sites, and if it is accepted that there is a need, can this need be met through existing identified sites and allocations. As noted earlier in the report, Arun District Council has, through the GTAA, identified that there is a genuine local need to provide additional pitches for gypsies and travellers for the period 2006 to 2016 and, further, has acknowledged that this identified need cannot presently be met within the District. However, in the longer term this identified need should be properly met through allocating suitable sites through the Core Strategy as advised in the relevant Circular and the decisision made by Cabinet in December 2009.

As identified in Paragraph 6.3 of the Baker Report, it is considered that the scale of need identified for the period to 2011 can already be met via existing temporary permissions preventing the need for any further permission to be granted at this time outside of the LDF process. Whilst

the personal circumstances of the applicant can, and should, be given some weight as material considerations in the determination of this application the level of weight to be afforded is a matter for the decision maker and should be carefully balanced against the applicable development plan policy and other considerations. In this case, officers are of the opinion that a clear and immediate need has been demonstrated by the fact that the site is already occupied and the personal circumstances of the applicant are of sufficient weight to justify the granting of a temporary planning permission contrary to development plan policies and if permission were to be refused resulting in eviction from the site this could contravene Article 8 of the European Convention.

This would not, however, apply once the Council has allocated sufficient permanent sites within the District to meet the identified needs of the gyspy and traveller community. It should also be noted that the grant of a temporary permission in this instance would not necessarily indicate that the local planning authority considers that this site should be identified as a permanent site for gypsies and travellers in the future.

Impact on character and appearance of countryside:
The site is outside of the Built-up Area Boundary within a countryside location. Whilst the proposed development would undoubtedly have some negative impact on the open nature of the locality, the existing screening on all boundaries of the site and any proposed landscaping helps to reduce its visual prominence within the countryside. Through a temporary permission, the development would not result in material harm to the character or appearance of the rural locality or conflict with the purposes of including the land within it.

Highways issues:
County highways raise no objections to the proposals on highways visibility or safety grounds.

Other material planning issues:
Circular 01/2006 recognises the need to provide sites to meet the working patterns of Gypsies and Travellers. Rural settings, where not subject to special planning constraints, are acceptable in principle although sites should respect the scale of, and not dominate, the nearest settled community. This criterion is considered to be met in the case of the current application. The caravans location is considered sufficiently far away from neighbouring residential properties such that the development would be unlikely to result in material detriment to neighbours by reason of noise disturbance. There would also be no material loss of outlook, privacy or sunlight as a result of this development.

Your officers consider that the extent of the red line on the application submission is larger than is required to be for a single caravan and it is therefore essential to restrict the permission to being personal to the applicant and relate to a single caravan only on the site, and within the current location only, to avoid any further structures or areas of hardstanding being erected on the site.

Conclusion:
Although the site lies outside of the Built-up Area boundary in the countryside, which needs to be protected from unwelcome development for its own sake, the personal circumstances of the applicant and the provisions of ODPM Circular 01/2006 have been properly and fully taken into consideration. Officers are of the opinion that the personal needs of the applicant in this instance justify the granting of a temporary permission for a period of eighteen months to enable them to continue to occupy the site whilst in the intervening period the Council make further progress

towards identifying and allocating suitable permanent gypsy & traveller sites within the District through the LDF process to meet the identified longer term needs of the Gypsy and Traveller community.

RECOMMENDATION

APPROVE CONDITIONALLY

1 The use hereby permitted shall enure for a limited period only being the period of 18 (eighteen) months from the date of this permission. At the end of this period the use hereby permitted shall cease and all mobile homes, caravans, vehicles, materials and equipment brought onto the land in connection with the use shall be removed from the site and the land restored to its former condition.

Reason: The development is contrary to the provisions of the development plan in that the site lies within the rural area and is unrelated to the needs of agriculture or forestry. Planning permission has only been granted in this instance because of the specific circumstances of the applicant. This temporary period covers the anticipated timescale for the LPA to identify and formally allocate sufficient site provision for the needs of the Gypsy and Traveller Community through the Local Development Framework process and to protect the character and appearance of the rural locality in accordance with Policy GEN3 of the Arun District Local Plan.

2 This permission shall only enure for the benefit of Mrs S Evans and her resident dependants.

Reason: The development is contrary to the provisions of the development plan in that the site lies within the rural area and is unrelated to the needs of agriculture or forestry. Planning permission has only been granted in this instance because of the specific circumstances of the applicant. This temporary period covers the anticipated timescale for the LPA to identify and formally allocate sufficient site provision for the needs of the Gypsy and Traveller Community through the Local Development Framework process and

3 No more than one structure, which includes such structures as caravans, living wagons, workshop/studios, and any vehicle designed or adapted to residential use meeting the statutory definition of a caravan shall be stationed on the land at any one time.

Reason: To avoid overdevelopment of the site and in the interests of the rural character of the area in accordance with policy GEN7 of the Arun District Local Plan.

4 No caravan or vehicle designed or adapted to residential use meeting the statutory definition of a caravan shall exceed single unit size.

Reason: To avoid overdevelopment of the site and in the interests of the rural character of the area in accordance with policy GEN7 of the Arun District Local Plan.

5 This permission relates to the following approved plans: Block Plan, Floor Plans &

Elevations of Playroom, Photograph of Containers - all received 25th February 2010

Reason: For the avoidance of doubt and to protect the residential amenity of neighbouring occupiers and the character and appearance of the rural locality in accordance with Policy GEN7 of the Arun District Local Plan.

6 INFORMATIVE: Summary of Reasons for Grant Article 22(1) General Development Procedure Order 1995

SUMMARY
This planning permission is granted because it complies with the policies listed below in that the development would not cause any material adverse effect on visual or residential amenity on the surrounding area on a temporary basis and its character and there are no material considerations to indicate otherwise.

RELEVANT POLICIES

LOCAL PLAN: GEN7, GEN2, GEN3

NATIONAL POLICIES: PPS1, PPS3, PPS7, CIRCULAR 1/2006

This is only a summary of reasons for granting to comply with Article 22 and full reasons appear in the Officer report.