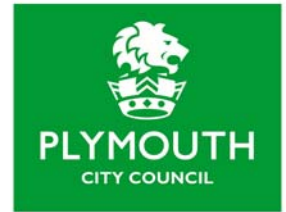


# PLANNING APPLICATION REPORT



**ITEM: 03**

**Application Number:** 11/01260/FUL

**Applicant:** Mr A Reilly

**Description of Application:** Variation of condition 2 of appeal decision APP/N1160/A/09/2118855 (Appendix A Schedule A) to allow a single commercial vehicle of up to 10 tonnes in weight (up to 15 tonnes gross weight) to be parked at the site

**Type of Application:** Full Application

**Site Address:** 28 RIDGE ROAD PLYMOUTH

**Ward:** Plympton Erle

**Valid Date of Application:** 28/07/2011

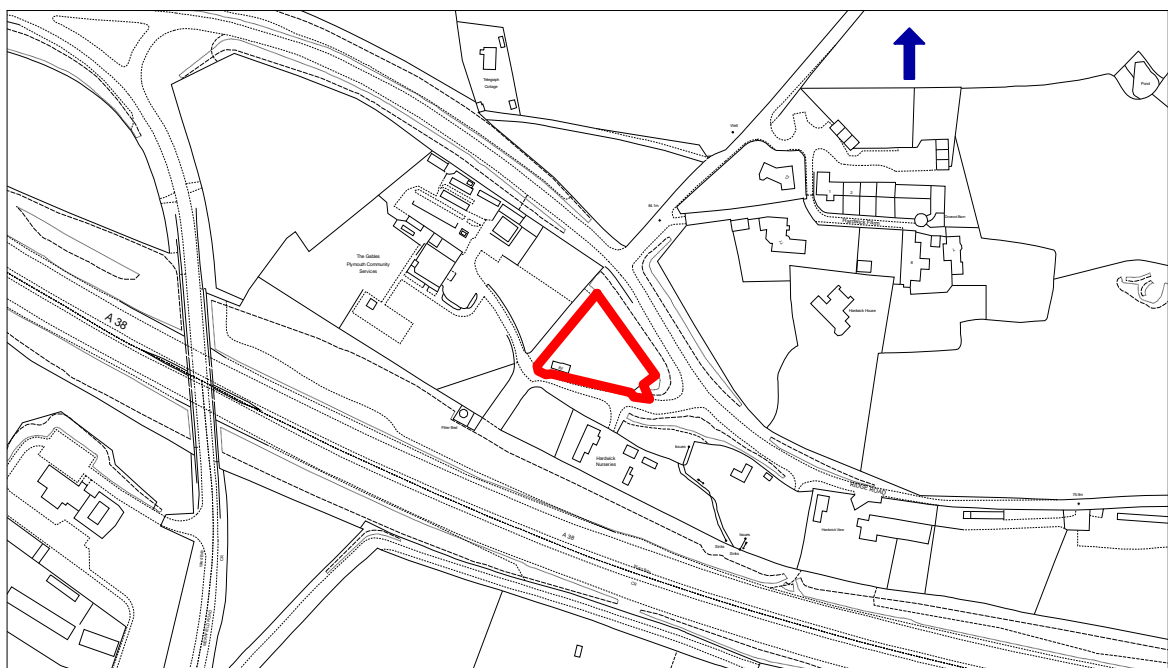
**8/13 Week Date:** **22/09/2011**

**Decision Category:** Member Referral

**Case Officer :** Jon Fox

**Recommendation:** Grant Conditionally

**Click for Application Documents:** [www.plymouth.gov.uk](http://www.plymouth.gov.uk)



## OFFICER REPORT

**This application is being reported to the Planning Committee following a referral by Councillor John Lock on the grounds that it is one of the conditions of the Planning Inspector's decision notice that there would be no parking overnight of heavy goods vehicles and the proposals would be a contravention of the Inspectors decision and would lead to more applications of this kind.**

### **Site Description**

The site consists of land forming part of a gypsy site occupied by two families, each with their own mobile home. There is a separate building providing day room accommodation for each family. The site is set below Ridge Road and access from the main road is via a road shared with Hardwick Nurseries and The Gables Hospital. The access road and Ridge Road do not have footways. The site, which is surrounded to all sides by a tree/hedge screen, is designated as Greenscape land and is of city-wide importance for its visual amenity quality, as a separation/buffer zone and as an area for countryside/food growing. The site is also within the countryside park as outlined in the adopted North Plymstock and Minerals Area Action Plan (NPAAP).

The site is surrounded to the west by the hospital; to the south by another gypsy site; to the south and east by Hardwick Nurseries, which is a single residence with attached land; and to the north by Hardwick House and Hardwick Farm (on the opposite side of Ridge Road), which some time ago was converted to a number of residential properties.

### **Proposal Description**

Variation of condition 2 of appeal decision APP/N1160/A/09/2118855 (Appendix A Schedule A) to allow a commercial vehicle of up to 10 tonnes in weight (up to 15 tonnes gross weight) to be parked at the site.

Condition 2 states:

2) No more than one commercial vehicle, which shall be for use by the occupiers of the caravans and shall not exceed 3.5 tonnes in weight, shall be kept or parked on each of the two pitches hereby permitted. This condition does not prevent the necessary presence on the land of vehicles making deliveries or collections to and from the site in connection with the residential use allowed by this permission.

### **Relevant Planning History**

09/00983 – Permission granted on appeal for use of land for a two-pitch gypsy site, consisting of two mobile homes and two touring caravans and parking. The proposals included a double stable block now used as day rooms.

The Planning Inspector imposed other conditions including the following:

3) No commercial or business activities shall take place on the land, including the storage of materials, other than is provided for in condition 2.

4) No vehicle exceeding 3.5 tonnes in weight under the control of the occupiers shall be parked in Ridge Road.

In considering the appeal the Inspector said in part that:

'A photograph taken from within Hardwick Nurseries shows that the vehicles and structures on the site at No 28 are visible in winter, whereas in summer there is a good level of screening....

'I also need to have regard to the possible impact of commercial use. It was argued by local residents that there has been an element of business/commercial use demonstrated by the visits of heavy goods vehicles to the sites. This seemed to relate particularly to No 28 and the occupiers confirmed that they own and operate two HGVs for which they claim to have overnight parking elsewhere. The appellants were willing to accept conditions prohibiting commercial use, including the keeping of any vehicle exceeding 3.5 tonnes....

'I also intend to impose conditions preventing commercial/business use. The effect would be to allow the parking of one vehicle up to 3.5 tonnes per plot. This would enable reasonable parking to support employment but would not permit larger vehicles. Local residents are concerned that larger vehicles have visited the sites and argue businesses are conducted from the land. I have given careful consideration to all the evidence at the hearing on this subject. Conditions 2-4 represent reasonable and enforceable restrictions. Visits to the site by vehicles in excess of 3.5 tonnes and their presence on the land (or in Ridge Road) would be detrimental to the character of the area and to the amenities of nearby residents.'

Since planning permission was granted complaints were received relating to the keeping on site of a lorry in breach of the conditions imposed by the Planning Inspector. Consequently a planning enforcement case file was opened and the owners were requested to comply with the condition. Further complaints resulted in the issuing of a breach of condition notice earlier in 2011. That notice is being complied with.

## **Consultation Responses**

### **Transport**

No objections.

### **Public Protection Service**

No objections.

### **Representations**

Five letters were received. The letter from Hardwick Nurseries, which is the nearest residential property, raises objections on the grounds of:

1. The turning of an HGV on the site, between the two dwellings and ancillary accommodation, is dangerous and an accident waiting to happen.
2. Limited visibility on exit from the site will significantly increase the possibility of an accident given the number of vehicular and pedestrian movements associated

3. Noise from vehicle movements and use of audible reverse warning horns.
4. The applicant does not, as stated in the application, have to walk miles to his HGV; rather he leaves and returns in a small van.

Hardwick Farm Management Company objects on the grounds of risk to adjacent families; inappropriate transport business; close to homes and in an area delineated a countryside park.

The letter from Hardwick House states that a 10 tonne lorry requires a wide arc to gain access to the site from Ridge Road and would present a danger to other users of this highway, which is without the safety of footways. The letter also objects on the grounds that a commercial business with a 10 tonne lorry would be harmful to the aspirations for Saltram Countryside Park.

A fourth letter, also from Hardwick states that:

1. The original conditions specifically ban such lorries.
2. The area includes two nursing homes and many retired people, and the applicant's children and domestic animals.
3. Approval was given by the authorities despite previous planning applications being refused and the protected classification of the site.
4. The area is part of the original protected locality around Saltram House and Hardwick Woods and most importantly lies at the heart of the master Plan for the Saltram Countryside Park.

The latest letter, from Hardwick, is critical of the officer's report to the previous Planning Committee meeting and is being treated as a letter of representation. The issues raised in the letter, and the officer's comments, are set out below:

The letter refers to the Council's planning enforcement action and related matters on the site. However, while the planning enforcement issue is a serious one, and is material to the consideration of this application, the Council is not prevented from varying the condition in question as a result of this action and must determine this proposal on its merits. There is reference also to claims relating to whether or not the applicant has to walk from his HGV at Cattedown, although very little weight would be attached to this matter. There is also a query as to what right the Local Planning Authority has to 'contravene the formal decision of the Inspector appointed by the Secretary of State...' (who imposed the condition that is now proposed to be varied). In answer to this query, the Planning Inspectorate has confirmed that once the Inspector issued the decision it was the end of the matter for them; it is the Local Planning Authority that has to enforce the conditions; this type of application, to vary a condition, applies to any planning permission whether issued by the Planning Inspectorate or the Local Planning Authority. This letter also says that there is an implication that the Local Planning Authority would not oppose commercial activities taking place on the site with heavy goods vehicles. This is not correct; condition 3 states 'No commercial or business activities shall take place on the land, including the storage of materials, other than is provided for in condition 2'. This condition is in force and is enforceable.

## **Analysis**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance, as well as taking account (with appropriate weight attached) of the Draft National Planning Policy Framework.

The main issues in this case are the impact of parking and manoeuvring a 10 tonne lorry on the amenities of the occupiers of Hardwick Nurseries and 30 Ridge Road, which are the nearest residential properties to the site, and the character of the area. The impact on Gables Hospital and residences at Hardwick Farm is not considered by officers to be significant because those properties are sufficiently distant from the site. It is understandable that a connection is made between the parking of the lorry and some associated business use at the site. However, condition 3 deals with preventing any business use and as such this matter is not a consideration now. With regard to the Inspector's comments in the appeal decision letter, it is clear that a restriction on lorry size had to be imposed because without such a restriction much larger vehicles could presumably be parked at the site, notwithstanding any VOSA (Vehicle and Operator Services Agency) restrictions.

The issue now is whether a larger vehicle would be harmful to amenity. In this respect 28 Ridge Road is screened from Hardwick Nurseries by hedge/trees and while this would be thinner in winter months, it was noted on site that new laurel plants had been planted in the hedge and that further planting is possible in order to screen the area where the lorry would be parked. In addition the degree of separation between the two properties and the fact that the lorry need not pass all the way across the frontage of the neighbour's property, means that the impact would be less than it would otherwise and would not be so out of character in this semi-rural environment.

There could be noise from washing and/or maintenance of the lorry. However, it is understood that the existing VOSA licence in force at the Ride does not allow the maintenance or washing of the vehicle on site. The applicant has confirmed that the lorry is currently maintained at a site in Cattedown Wharf. VOSA has confirmed that there is no operator's licence in force at 28 Ridge Road and that it is likely that any such licence granted at Ridge Road would have the same restriction imposed on it. VOSA can also restrict times of vehicle movements in their licence if need be.

It is also necessary to consider any HGV movements to and from the Gables Hospital, the noise from the A38 and whether there have been complaints about other HGV reversing horns. In this respect the applicant would be happy to fit isolators and or warning reversing lights and speakers that comply with the guidelines of low decibel omissions. However, the HGV would be able to enter and exit the site in forward gear and in these circumstances the reversing horn would not need to be sounded in the morning when the applicant leaves for work.

Nevertheless, despite the ability to screen the site, and to manoeuvre the vehicle to minimise reversing movements, the site is considered to be in a relatively quiet, semi-rural area and that, despite the proximity of the A38 dual carriageway and occasional larger vehicles attending the hospital site, the occupiers of nearby residential properties should not be subjected to the sudden noise impact of early morning engine noises and associated activity. Therefore a restriction on early morning lorry movements is considered vital in order to preserve residential amenity, notwithstanding the need for a VOSA licence and the ability for that authority to impose and administer any such restrictions, if necessary. In this respect the appropriate times are considered to be those set out in the Council's Code of Practice for construction and demolition sites, because such restrictions are designed to prevent, among other things, the impact of lorry engine noises at unsociable hours, which are considered necessary in the context of this site.

Further planting to the site boundary, adjacent to where the lorry would be parked, has already been implemented as part of the original consent. However, it is considered necessary to condition further landscaping works in order to effectively screen the site of the parked lorry from neighbouring occupiers.

Some of the representations refer to the risk to highway safety and the safety of persons on the site. However, Transport Officers consider the parking and manoeuvring of the vehicle to be safe in highway terms.

In sustainability terms, running the lorry from the site may reduce overall fuel usage but this is unlikely to be significant and would not be a significant factor supporting the granting of permission.

### **Section 106 Obligations**

There is no Section 106 obligation in respect of the proposal.

### **Equalities & Diversities issues**

While the application is made by a member of the gypsy community, the planning issue relates solely to the impact of the proposed lorry parking on amenity and the same considerations and weight would apply if the applicant was not a member of the gypsy community.

### **Conclusions**

There is clearly a need to have regard to the Inspector's decision to restrict the size of the vehicle kept at the site. However, the Local Planning Authority must also ensure that due consideration is given to proposals to vary a planning decision notice. It does not follow that allowing a larger vehicle to be kept or parked at the site would imply a positive view of business or commercial activities taking place at the site, and would not weaken the Local Planning Authority's opposition to such activities were they to arise.

Having considered the matter carefully the proposals are not considered to be demonstrably harmful to residential amenity or the character of the area and it is recommended that permission be granted to vary condition 2, to read as follows:

2) Condition 2 of appeal decision APP/N1160/A/09/2118855 (Appendix A Schedule A) is hereby varied to read: No more than one commercial vehicle, which shall be for use by the occupiers of the caravans shall be kept or parked on each of the two pitches hereby permitted. The weight of the said commercial vehicles shall not exceed 10 tonnes (15 tonnes gross weight) in respect of the applicant's pitch and 3.5 tonnes in respect of the other pitch. This condition does not prevent the necessary presence on the land of vehicles making deliveries or collections to and from the site in connection with the residential use allowed by this permission.

As considered in the above analysis two further conditions should be added in order to preserve residential amenity. These conditions would become conditions 10 and 11 of the decision notice, which are recommended as follows:

10) The 10 tonne lorry shall not be parked or kept at the site until full details of soft landscape works and a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and a schedule of landscape maintenance for a minimum of five years.

Reason:

To ensure that satisfactory landscaping works are carried out in order to screen the site from surrounding properties, in accordance with Policies CS18 and CS34 of the Core Strategy of Plymouth's Local Development Framework April 2007.

11) The 10 tonne lorry shall not be driven on the site or the access road serving the site before 8am or after 6pm on Mondays to Fridays; before 8.30 am or after 1pm on Saturdays and not at any time on Sundays or public/bank holidays.

Reason:

To ensure that the amenities enjoyed by neighbouring occupiers are not unreasonably prejudiced by lorry movements in accordance with Policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

Approval of this type of application, to vary a condition, is the subject of recent Government changes to the procedures for dealing with minor material amendments to planning decisions. These new procedures require the production of a new decision notice listing all conditions imposed originally as well the amended condition and any additional conditions. To this end the officer recommendation lists all such conditions that would appear on a new decision notice.

### **Recommendation**

In respect of the application dated **28/07/2011** and the submitted drawings Amended description, it is recommended to: **Grant Conditionally**

## **Conditions**

### **OCCUPATION RESTRICTED TO GYPSIES AND TRAVELLERS**

(1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

### **WEIGHT OF VEHICLES PARKED AT THE SITE**

(2) Condition 2 of appeal decision APP/N1160/A/09/2118855 (Appendix A Schedule A) is hereby varied to read: No more than one commercial vehicle, which shall be for use by the occupiers of the caravans shall be kept or parked on each of the two pitches hereby permitted. The weight of the said commercial vehicles shall not exceed 10 tonnes (15 tonnes gross weight) in respect of the applicant's pitch and 3.5 tonnes in respect of the other pitch. This condition does not prevent the necessary presence on the land of vehicles making deliveries or collections to and from the site in connection with the residential use allowed by this permission.

### **NO COMMERCIAL OR BUSINESS ACTIVITY**

(3) No commercial or business activities shall take place on the land, including the storage of materials, other than is provided for in condition 2.

### **WEIGHT OF VEHICLE PARKED IN RIDGE ROAD**

(4) No vehicle exceeding 3.5 tonnes in weight under the control of the occupiers shall be parked in Ridge Road.

### **NUMBER OF CARAVANS**

(5) The use hereby permitted shall be restricted to the stationing of no more than 4 caravans at any time, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 2 shall be static caravans or mobile homes.

### **SUBMISSION OF DETAILS**

(6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- i. within 3 months of the date of this decision a scheme for: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the size and siting of caravans; and tree, hedge and shrub planting and earth mounding, including details of species, plant sizes and proposed numbers and densities; any works necessary to deal with land contamination together with a report explaining and justifying the works proposed (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The scheme shall include the enclosure of the western boundary of the site.
- ii. if within 9 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.



iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

#### MAINTENANCE OF PLANTING

(7) At the same time as the site development scheme required by condition 6 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

#### NO ACCESS TO ADJOINING LAND

(8) No access shall be formed from the appeal site into the land adjoining the western boundary and the mounding/embankment along that boundary, including the enclosure required by condition 6, shall be retained throughout the life of the development.

#### STABLES/TACK ROOM ANCILLARY USE ONLY

(9) The stables/tack room on the land shall be used only for purposes ancillary to the use hereby permitted.

#### LANDSCAPING WORKS

(10) The 10 tonne lorry shall not be parked or kept at the site until full details of soft landscape works and a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and a schedule of landscape maintenance for a minimum of five years.

#### HOURS OF OPERATION

(11) The 10 tonne lorry shall not be started up or driven on the site or the access road serving the site before 8am or after 6pm on Mondays to Fridays; before 8.30 am or after 1pm on Saturdays and not at any time on Sundays or public/bank holidays.

#### Reason:

To ensure that the amenities enjoyed by neighbouring occupiers are not unreasonably prejudiced by lorry movements in accordance with Policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

#### INFORMATIVE - CONDITIONS OF NEW DECISION NOTICE

(1) The applicant is advised that conditions 1, 3, 4, 5, 6, 7, 8 and 9 are conditions imposed by the Planning Inspector, condition 2 is the varied condition and conditions 10 and 11 are additional conditions.

#### INFORMATIVE - CONDITIONS PREVIOUSLY DISCHARGED

(2) The Council recognises that conditions imposed by the Inspector have previously been discharged.

#### **Statement of Reasons for Approval and Relevant Policies**

Having regard to the main planning considerations, which in this case are considered to be: the impact of the parking of a 10 tonne lorry on the amenities of neighbours and the character of the area, the proposal is not considered to be demonstrably harmful. In the absence of any other overriding considerations, and with the imposition of the specified conditions, the proposed development is acceptable and complies with (a) policies of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and supporting Development Plan Documents and Supplementary Planning Documents (the status of these documents is set out within the City of Plymouth Local Development Scheme) and the Regional Spatial Strategy (until this is statutorily removed from the legislation) and (b) relevant Government Policy Statements and Government Circulars, as follows:

CS34 - Planning Application Consideration

CS22 - Pollution

SPDI - Development Guidelines

NPPF - Draft National Planning Policy Framework 2011