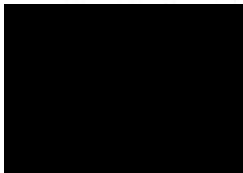


12. April 2019

Dear Tim



12. April 2019

Dear Tim

The Community Groups Response to the Village Green Application and Town Council is outlined in this letter. The Village Green Application and Town Council fails to address key concerns and in particular key issues contained in the history of this Open Space

1. This is a Recreational Land provided in trust by the Town Council and remains part of the Open Space for the Community of Greenfields. The Right of Recreation is consented by the establishment of Greenfields Recreation Ground 1925 Council Minutes and the 1926 Map 'as of right' showing the extent of the Recreation Ground Barker Deed 1926. This claim is baseless and an obfuscation of the facts.

In 1925 the statutory predecessor to the Town Council decided to buy land for recreation for the benefit of its local residents of the Greenfield District. The Town Council's Estates Committee investigated the options and following negotiations, the minutes of its meeting of 28th September 1925 [4-2] record: "In accordance with the desire of the Council, your Committee have considered the possibility of providing a Recreation Ground for the Greenfields District, and have been in negotiation with Mr. John Barker, the owner of the Broomhall Estate, for the purchase of a portion of the meadow lying to the back of Broomhall, 3.4 acres in

extent shown on the plan” [L] [SEP] The Committee recommended to the Council the purchase from John Barker, owner of the Broomhall Estate, of the meadow lying to the back of Broomhall, 3.4 acres in extent, for £700. [L] [SEP]

The next month the Committee also recommended (as recorded in minutes of the Estates Committee’s meeting of 12 October 1925 [4-4]) to purchase land neighbouring the Barker Land from a Mr. Capper so that “by combining the Broomhall land with the [Capper] land a much needed and most useful recreation ground will be provided for the Greenfields District”. Subsequent minutes of 8th February 1926 [4-4] record that a loan of £300 was obtained from the Ministry of Health in order to purchase the Capper Land for a recreation ground. The area of the currently proposed development is on the Barker Land portion of the overall area acquired for the recreation ground. [L] [SEP]

The Barker Land was conveyed to the Mayor and Alderman Burgesses of the Borough of Shrewsbury (a predecessor corporation to the Council) by conveyance dated 26 March 1926 for seven hundred pounds [4-5]. An option to purchase the Capper Land was exercised on 27 March 1926 and a conveyance completed [4-12].

The Barker deed mentions the acquisition of the Capper Land. The two parcels are clearly marked on the original registration deeds at the Land Registry at [4-26].

There is reference to the Greenfields Recreation Ground throughout Council Minutes 1929, 1931 and 1942



Residents opposing planning proposals 2012, Greenfields Recreation Ground

2. The Council(s) has not provided any evidence or provenance in this matter of 'rights' and indeed documents registered at the Land Registry Register SL171557 detail Greenfields Recreation Ground to include this land and land sold for development. Therefore these grounds are unsubstantiated.

A request for provenance is required, not just a statement.

3. There is a Right of Way that begins at the gate of the Recreation Land. This is a Right of Way for the Village Green, This is a clearly established right of way and right of use for **more than 20 years**

4. The access and easement to this Village Green and Open Space is across and unlawfully constructed car park (see attachment) that was constructed without consent and consultation.

See Council Minutes 1978/79 Car Park Construction.

We argue that these statements by the most senior councillors in Shropshire regarding the disposal of Public Lands and that this land 'has never been part of the recreation ground'

that has never been verified by recourse to their privileged knowledge of Council documents and/or information. This inaccuracy is compounded by a complete lack of scrutiny and the lack of any meaningful investigation and an unmediated corroboration of this statement without investigation by the Councils Monitoring Officer or most Senior Officers. Not providing and not investigating statements by officials regarding the important and 'unlawful' disposal of Greenfields Recreation Ground, Public Land held in trust and vested to the care of these high-ranking Council Officers is allowing unfounded and prejudicial commentary, fake news if you like, to go unchallenged by those in charge in the discharging of their democratic accountability and making these unfounded statements misleading the public at large. It damages their objective accountability and reputation in our community from a position of privilege and beyond in the sale and disposal of Public Lands – this is a serious accusation.

These comments made by the most senior officers at Councils and following investigation are simply ***a succession of baseless, inaccurate and unaccountable claims made in the Public Domain with which they, the most senior officers at Councils, have used to justify the unlawful sale of Public Land.***

What information: the information Councils have used in arriving at the statement this land 'has never been part of the recreation ground' has never been declared. In the sale of Public Land this is baseless opinion and conjecture which is both unaccountable and unacceptable commentary designed to mislead the Public. The Greenfields Community Group has requested their, the most senior officers at Councils, information time and time again and invited these public servants to our group meetings. This information is not by necessity legal documents that the Councils should have considered prior to any sale of Public Land and its statement but would include – maps; disposal notices, legal documents and additionally include emails, memoranda, reports, minutes or files pertaining to their commentary and investigation and the justification of public statements that – *this has never been part of the park.*

These high ranking officials are in breach of all eight of the codes of conduct but most specifically in the above of *giving out misleading information, poor record keeping* (no information identified) and *a willing failure to investigate.*

*We note that all of the documents considered in determining the legitimacy of this case are from members of the Public, amateurs and yet the Council vested in entrusting this land with professional and legal accountability has provided none. In spite of its access to a legal department; specialist archivists and its own documents, files; memoranda; Land Registry Files; deeds; deed maps; cartographers; specialist officers etc excepting an update on JR contained in your draft which is a legal outcome determined by a judge on Private Ownership and Open Space – not the Councils and Officers action. Their unverified statement *this has never been part of the park* has not been legitimised its position and sale of Public Land, this cannot be democratic or legitimate. It is unreasonable to assume that the General Public are a back stop for the diligence for the Council in maintaining their **own liabilities and diligence.**

In direct contradiction to the unverified statement *this has never been part of the park* the Historical Assessment dated **September 2011 submitted by the Town Council** as part of the original planning application includes the statement "The site was defined in the mid-C20 when it became allotments." (p.6). It goes on to say that: 'it is important to note that in 1849, and for more than a century afterwards, the current site was part of the park, and was not a distinct enclosure'. SABC records indicate that the two areas of land purchased from Broomfield Estate and from Capper were for the creation **of the Recreation Ground**. Also SABC minutes from 1942 record the decision of "land being absorbed for War Allotments ... Small portion of **Greenfields Recreation Ground Falstaff Street**"; and subsequently in

1956 SABC minutes refer to "temporary allotments which are still being cultivated **on the near-by Recreation Ground**".

The Historical Assessment dated **September 2011 submitted by the Town Council** states that 'the site (dev land) was defined in the mid-20c, when it became allotments. Before this it had been part of the park attached to Greenfields and Broom Hall'.

Therefore, ***both County Council's have failed to have regard to Greenfields Recreation Grounds status nor have they consulted with this community, Greenfields about the status of this land but merely after the fact 'made up their mind'. The County Councils:***

- i. Failed to make adequate inquiry as to the site's history and status relevant to whether it was open space; [L] [SEP]***
- ii. Give no weight to relevant policy including NPPF paragraph 97 concerned with open space; [L] [SEP]***
- iii. Received, and in granting permission adopted, inadequately reasoned advice in the Officer Report ("OR") [3-11-3-63], in particular by inaccurately asserting that there was no clear evidence showing the land had been designated as open space or that there were no clear plans maps showing the extent of the open space land acquired for the recreation ground (OR para 6.1.9). [L] [SEP]***

The Council hold the Park under section 10 of the 1906 Act on a statutory trust for use by the public for its recreation, such that it has been said that the public are its beneficial owners (see Blake v Hendon Corporation [1962] 1 QB 283. **This is true when as a result of successive local government reorganisations, its ownership has passed through the hands of a number of public bodies, including the Shrewsbury and Atcham Borough Council, the Council, and, now the Town Council. So, it has always been part of the park. Especially seeing as the Town Clerk now writes in contradiction of public statements – this has never been part of the park**

Yours Faithfull

Peter

Dr Peter Day

Borough Planning Officer
Chief Environmental Health Officer
The Building Surveyor

3101/AJB/22/0/1

Councillor P. Dunham,
Theables,
Lewes Road,
Little Wymondley,
Hemel Hempstead.

Dear Councillor Dunham,

Greenfields Recreation Ground

I refer to your letter of the 28th July.

The latest development about tipping near the Bagley Brook is that I understand the County Council will be taking planning enforcement action.

The relevant history of the Recreation Ground car park started when the contractors who built the new sewerage system in Greenfields in 1978/79 used the area as their site compound. When that use ceased it seemed appropriate that the hardcore which had been put down should be left in order to provide the useful facility of a car park. There never was any intention of providing tarmac and indeed at the time I was approached with specific requests to make sure that there would be no tarmac and I believe that that is a view held quite strongly by a number of people even today.

I understand that the Parks Department have quite recently carried out some maintenance on the car park but the present budget provision would go nowhere near the cost of providing a tarmac surface and if this is what is wanted then it will be a matter for consideration at Estimates time. It will be expensive but if you intend promoting the idea perhaps you would let me know and I can have an estimate prepared for consideration by Committee when they go through their estimates at the turn of the year.

I am not sure that sleeping policemen would have much effect upon the speeds which are involved and they do have a major disadvantage of the noise which is created by vehicles bumping over them, something which can become quite irritating for the residents living near by.

Perhaps you will let me know if you want the estimate prepared.

Yours sincerely,

AN
SW

Director of Technical Services

Response to Town Council Objections.

Meeting the requirements of s15(2) The Commons Act 2006

Point raised by council.

The Application is made in accordance with s15(2) The Commons Act 2006

15 Registration of greens

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where— (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the application.

Response.

We would contend that whilst the inhabitants have met all of the other requirements of s15(2), the inhabitants' use of the recreation ground for recreational purposes has been "by right" and not "as of right". At no time has Shrewsbury Town Council or any other Council before it not granted permission to use the recreation ground.

The council has changed the nature of the recreational ground. The original park's design did not include a car park and the land is not separate, but belongs to the park. Please compare appendix 3 and 4. Appendix 3 is taken from the OS maps in 1965 and appendix 3 is a scanned image from the council's letter regarding the land being part of a Community Asset. The hashed lines on Appendix 3 was disregarded by the council as being part of the Community Asset, with objections being dismissed. We would argue that at the time of the application the term "as of right" is "as right". By the council changing the nature of the park to include a car park and as a consequence stopping the community from asking for the full park as being a community asset, that the Council are putting at risk residents right to enjoy the park fully and safely. The right inferred by the in subsection 2 must ensure that the park is safe to perform recreational activities. We would regard the council's actions on this as being unlawful as they have no right to change the designed nature of the park without asking its residents. This is supported by an unrelated case to the adjacent land which is currently at Judicial Review. By allowing the hashed marks to be developed and impact the recreational activities (mentioned further in this document), residents now have limited right and certainly not as of right. If the council continues to state that residents have "as of right access" negligence must be raised whereby the council are forcing residents to engage in past times which could be potentially dangerous, again, supported below.

Attached is the 1954 ONS map clearly showing the Public Footpath and Right of Way that we wish to protect in our Village Green Application, as well as the entrance and exit through which the footpath enters and exits the current Greenfields Recreation Ground which will become our Village Green. Your changes are across this Right of Way. This is Open Space held in trust for our community and the changes to this application are not acceptable. You are trying to apply different principles and laws to the same piece of land, Open Space and it is held under the Open Spaces Act 1906.

The **Development Management Report** evidenced below shows that the recommendation was made that the land (or car park as the council would say) not be altered. Again, by not doing so, the council is putting residents at risk providing so safe right of access at all.

Development Management Report. (Tim Rogers 30/08/2018). Application Number: 17/05234/FUL

Shropshire Playing Fields Association (12.07.2018): The nomination of the Greenfields Recreation Ground as an Asset of Community Value which includes the site access point at Falstaff Street has been approved and has been listed accordingly. The proposed point of access therefore conflicts with the confirmed nomination. The access point would appear to clearly be exclusive to the recreation ground site and therefore if this planning application were to proceed an alternate access point needs to be found.

Other Matters of Relevance to this parcel of land

Point raised by council.

In 2017 the Town Council sold off a parcel of the title to which this application relates for housing development. Alongside the sale the Town Council granted easement rights to access over the entrance and carparking area to gain access to the development site. Permission has also been granted for works to be carried out to the entrance, subject to permission being granted.

It is also worth noting that the sale of the land adjacent is subject to dispute and there is evidence that the Town Council has not acted with due diligence, care and aforethought in taking care and looking after all of the recreational ground. Whilst this investigation continues, Shrewsbury Town Council's claim that they have and are looking after the recreational ground needs to be dismissed. The judgement of the VGA needs to be based on facts not claims.

Response:

(i) Commons

16. In *Bakewell*, the House of Lords said the following:

'The owner of a common cannot lawfully do anything on the common that would constitute an unreasonable interference with the rights of the commoners... to do so would be a nuisance ... Nor could the owner of a common lawfully authorise things to be

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done by others on the common that, if done, would constitute a nuisance. The ... owner of a common can [not] authorise to be done whatever he pleases. Authority given to too many people to camp on the common and light too many fires could damage the sufficiency of grass on the common for the commoners' grazing rights. If that were so, the authority would not, in my opinion, be a lawful one. Similarly, authority to too many people to drive too many cars or other vehicles over the tracks on the common might not be lawful. It would depend on the facts. But, subject to that qualification, subsection (4) [of section 193 of the 1925 Act] allows the owner of a common to which section 193 applies to authorise the doing of an act that if done without that authority would be an offence under the subsection.'

17. In essence, councils are allowed to grant easements over common land but they must balance that right with their obligations:-

- Pursuant to powers under s. 193(4) of the Law of Property Act 1925 and s. 34 (1) Road Traffic Act 1988 ; and
- to commoners.

<http://www.yorkshirelca.gov.uk/UserFiles/Files/Legal%20Topic%20Notes/LTN57%20Easements%20over%20Common%20Land%20and%20Village%20Greens%20April%202011.pdf>

By granting easement rights and not consulting the public, it cannot be concluded that no interference would take place. If they are claiming the car park is part of the land (which it is) then they owe a duty of care to ensure that the public do not consider these easement rights a nuisance. Also, since the sale of land could not be objected by the public, one can only assume that further actions such as this may continue hence the application. It is right that the land is now a community asset which requires residents to have notice, but does not give public overall control over the use of the land. The easement rights create a nuisance in its own right by causing possible obstruction and damage to the park during the building process. These actions undertaken by the council therefore cannot be considered legal. Regarding evidence that nuisance could occur. Please see comments regarding the Development Management Report below.

Development Management Report. (Tim Rogers 30/08/2018). Application Number: 17/05234/FUL

"The submitted layout plans do not provide much detail about the integration between vehicle access to the development, the car park and the cycle route. We understand that revised plans for the development are due to be submitted. So whilst at this stage we are reassured that the route will be kept open and accessible, we would be keen to see design details for this integration included in the new plans".

Here plans clearly show that there is a potential risk to disruption and no safeguard has been presented ensuring no nuisance.

I also would like to raise the point from the same report:

(24.04.2018): The need to provide, encourage, and facilitate sustainable modes of transport is a key theme of the NPPF. Sustainable modes of transport are principally walking, cycling, buses, trains, which cause less damage to the planet, and bring health benefits to users.

Yet this proposal, which abuts a Walking/Cycling path, part of Shrewsbury's Cycle Network, does the opposite. It discourages the use of these more sustainable modes, by cutting across the foot/cyclepath and introducing conflict and danger with a new road.

It is perhaps symptomatic that the application scarcely mentions cycling. Generally, 'access' means 'access by car'. Cycling is just simply ignored.

On walking, 'it is envisaged that most pedestrian traffic will continue to use the wide pathway with the playing field site...Pedestrian access would be along a pavement on the west side of the new roadway' is all the Design and Access Statement has to offer (p9), neatly ducking also the issues of loss of recreation land, or ownership. The impact of the scheme on existing users is not discussed, except the vague claim that 'pedestrian safety will be safeguarded and pedestrian connectivity will be enhanced.' We cannot find any specific proposals.

Another puzzle: '... (these) footpaths through the site will assist pedestrians, particularly school children, to gain access to the school premises' (Transport

Ground, Falstaff Street, Shrewsbury

Statement, B, para 2, p3). Again, no proposals for such footpaths could be found.

We support the call by residents for a Transport Assessment, as the condition

'whether: - the opportunities for sustainable transport modes have been taken up'

has clearly not been fulfilled.

We believe the applicant has some way to go to satisfy the demands of the NPPF.

Introducing extra danger to people cycling and walking must be opposed, and so

we oppose the proposal.

The current highlighted section demonstrates the risk to residents in enjoying the recreation ground. It notes there is an increased risk to members using the park because of the consequence of the planning and the council's lack of ability in looking after the park recently. The council raises arguments suggesting its management of the park in previous years has been adequate. However, as evidenced above, this statement is not true as by approving planning permission for the development of the land adjacent, disruption and nuisance will occur. The case of Bakewell clearly shows the council are not following their obligation.

Assets of community value – counter.

Point raised by council.

“The Greenfields Recreation Ground was added to the Register of Assets of Community Value on the 10th July 2018 providing the area with added protections from development.”

Response:

Our VGA application was made before this. This ROA is an attempt to prove that the council is wanting to protect the land. We would argue the VGA was the trigger event in the matter and we as residents should retain the right to this security. The council has had years to create the park as an ROA, but, they have not until now. The protection does not include the area highlighted in Appendix 3 and it should be extended to this for the points already raised.

Conclusion.

Point raised by council.

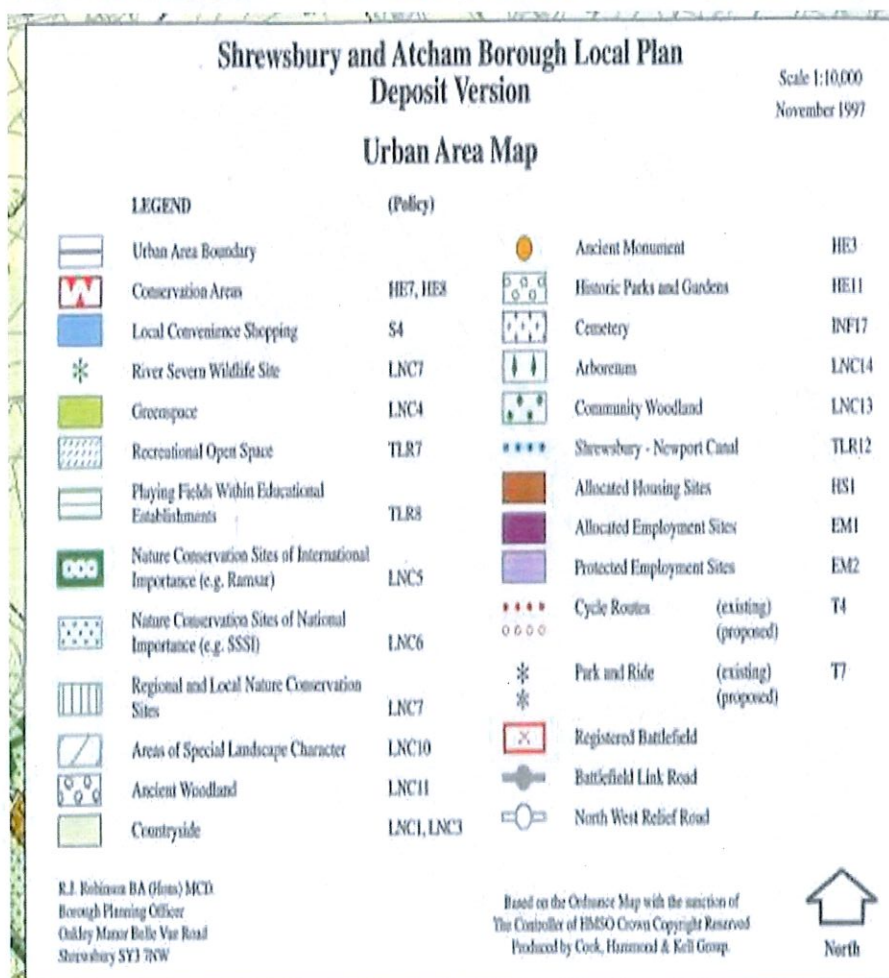
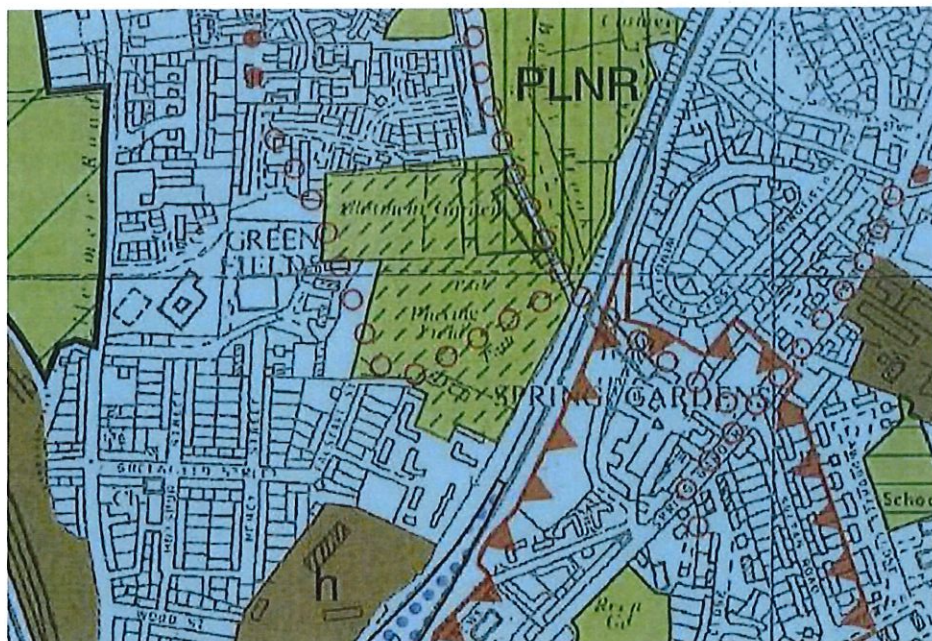
We would also question the motives of the applicants. Is this application to protect and preserve the recreational ground for the wider use of the community or is it an effort to stymie the development of an adjacent parcel of land which was previously in the Town Council's ownership has an existing outline permission with a recent full permission being subject to an application for Judicial Review.

Response:

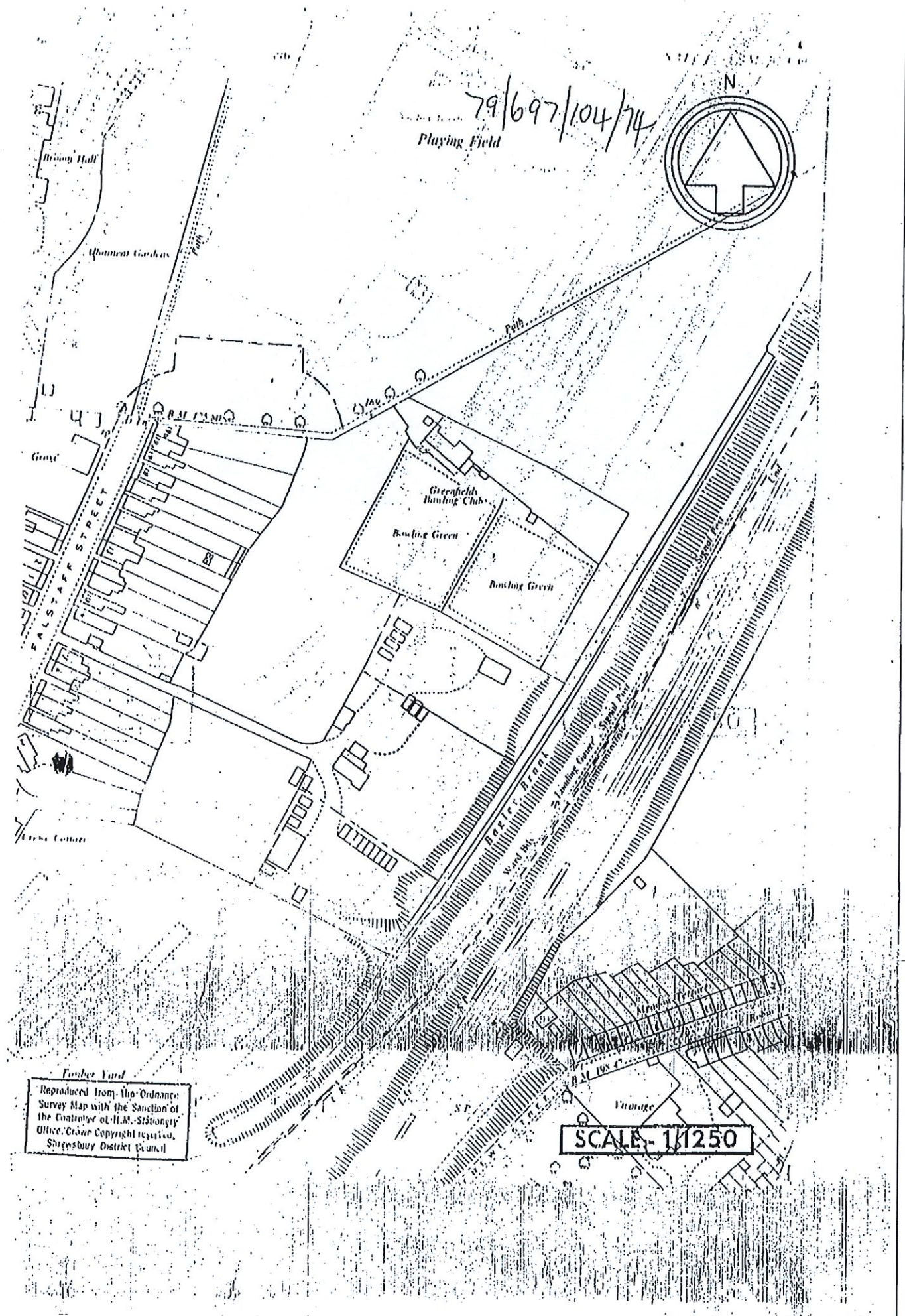
The council is more than welcome to question motives, however, there is no proof of such and therefore this accusation should be ignored and wiped from the record. Since the Town Council already approved a Community Asset there can be no question now of any such relationship between a trigger event. The only question was an inference of a trigger in relation to the car park. However, as proven, the council failed to tell residents of any easement rights or sale of land and the VGA seeks to protect the park from further damages, changes and nuisances, rather than obstruct the ongoing judicial review. This report has already indicated that there is a risk to the park to warrant this application. Again, there is no proof and as such unless evidence is given, the comment should be dismissed.

Appendix 1

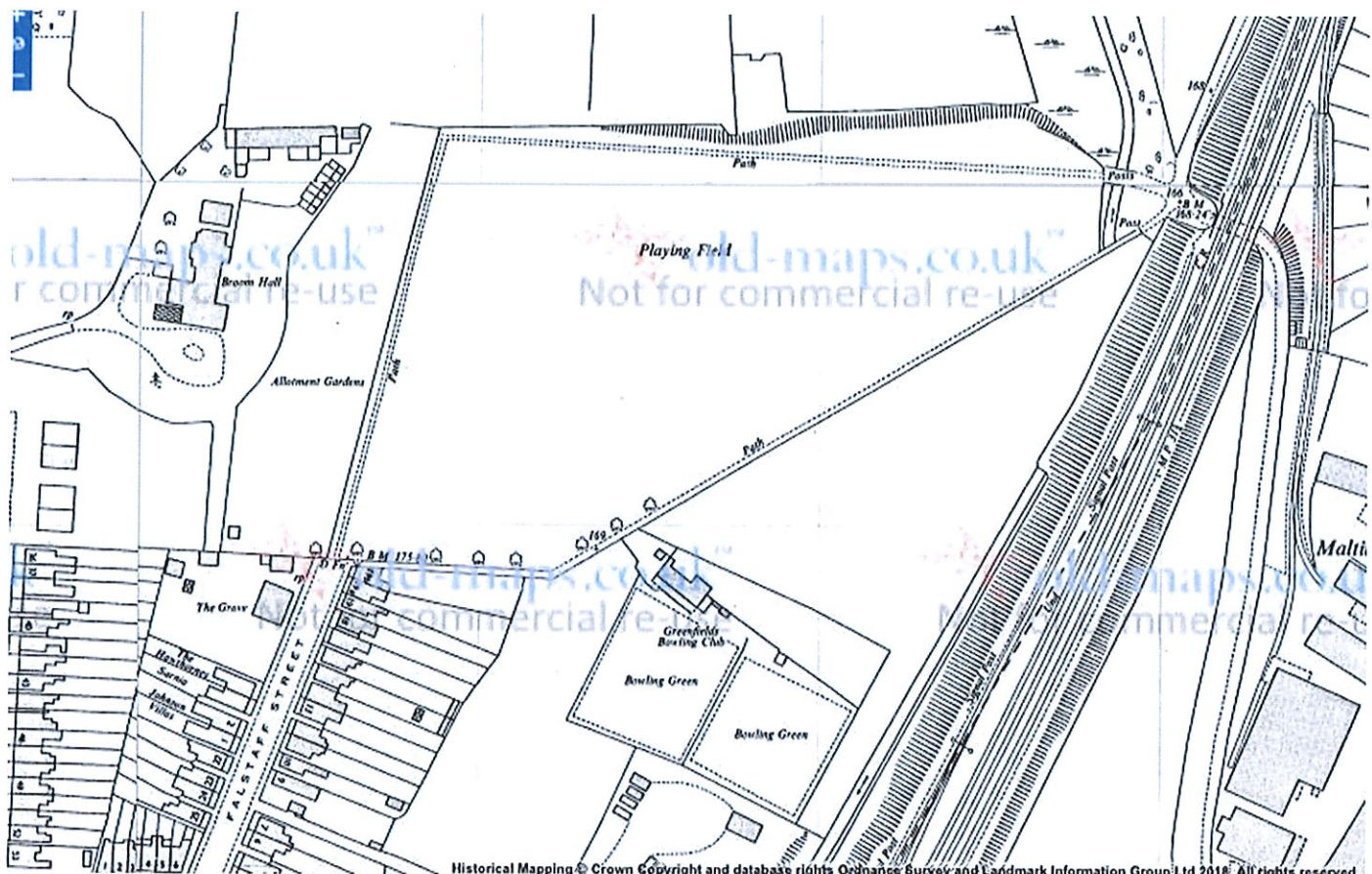
APPENDIX F: Extract from the proposals map of Shrewsbury and Atcham Borough Local Plan



Appendix 2



Appendix 4



Appendix 3

