

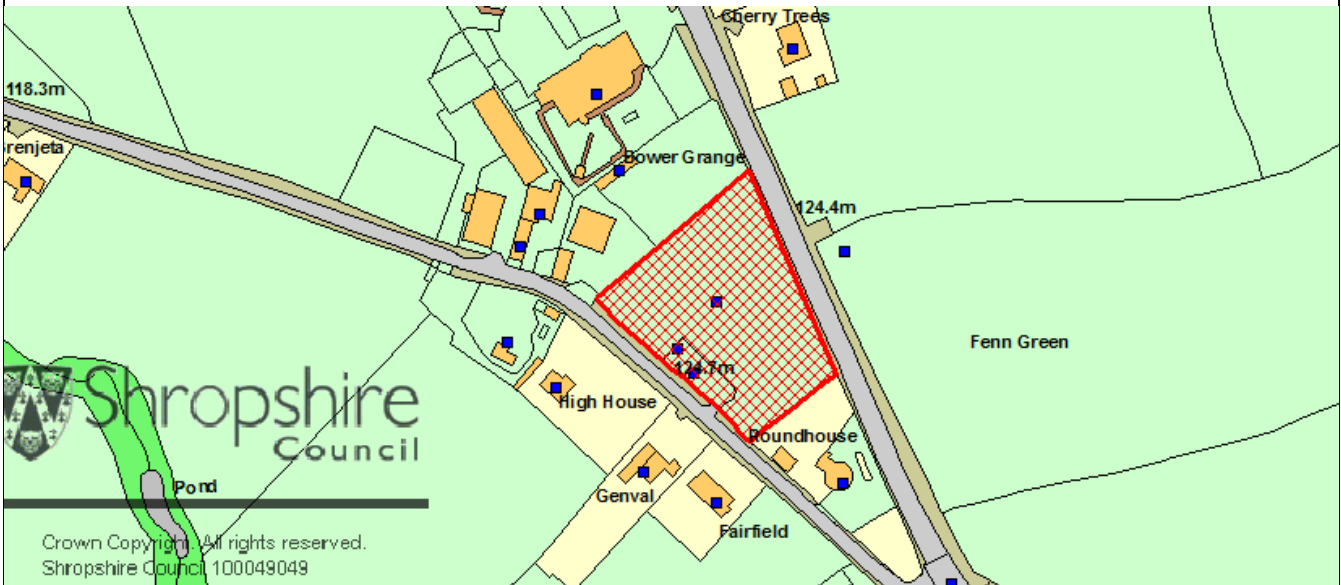
Development Management Report

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Summary of Application

Application Number: 20/02669/FUL	Parish:	Alveley And Romsley
Proposal: Application under Section 73A of the Town and Country Planning Act 1990 for use of land as travellers caravan site comprising of 3No. caravans (retrospective)		
Site Address: Land Adjacent The Round House Fenn Green Alveley Shropshire		
Applicant: Mrs Roberts		
Case Officer: Mike Davies	email : planning.southern@shropshire.gov.uk	

Grid Ref: 377093 - 283378



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Recommendation:- Refuse

Recommended Reasons for refusal:

1. The site is situated within the Green Belt where there is a presumption against inappropriate development. The stationing of residential gypsy mobile homes and touring caravans is inappropriate development that would erode the openness of the Green Belt and detract from the visual amenity and rural character of the area. No very special circumstances of sufficient weight have been demonstrated to justify a departure from Green Belt policy. The proposal is therefore contrary to Shropshire Core Strategy policies CS5, CS6, CS11 and CS12, the Shropshire Sites and Management of Development Plan policy MD6, MD7a and S3, the National Planning Policy Framework section 13: Protecting Green Belt Land, and policy E of the Planning Policy for Traveller Sites.
2. The proposal does not represent a sustainable form of development due to its isolated nature placing high reliance on motor vehicles to access services and it is therefore contrary to Section 2 of the NPPF, Policy B of DCLG Planning Policy for Travellers Sites (2015), Policy CS6 of the Shropshire Core Strategy (2011) and Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan (2015).

REPORT**1.0 THE PROPOSAL**

- 1.1 This is a retrospective application for three Gypsy and Travellers pitches on a site adjacent the Round House at Fenn Green, Alveley. The application proposes the siting of one static caravan for permanent residential occupation by the applicant and for two hardstanding areas for two touring caravans for use by the applicant's immediate family who also reside on the site.
- 1.2 The applicant's family has occupied the site since the summer of 2011 and it is therefore important to understand the site history to fully evaluate the proposals.
- 1.3 An application was submitted in 2010 for under application 10/03292/FUL however, this application was never validated and was subsequently withdrawn.
- 1.4 Following on from this a further application 11/01163/FUL was submitted for the siting of one gypsy caravan for permanent residential occupation by the applicant and his immediate family and for two hardstanding areas for two touring caravans for use by the applicant's extended family when they are visiting. This application was subsequently refused on 21st June 2011, The reasons for refusal were as follows:
 - 1). *The site is situated within the Green Belt where there is a presumption against inappropriate development. The stationing of residential caravans is inappropriate development that would erode the openness of the Green Belt and detract from the visual amenity and rural character of the area. No very special circumstances of sufficient weight have been demonstrated to justify a departure*

from Green Belt policy. The proposal is therefore contrary to Shropshire Core Strategy policy CS5, Bridgnorth District Local Plan saved policy S3 and Planning Policy Guidance Note 2: Green Belts.

2). The site previously contained a lido and following the closure of that facility the land was used for the tipping of waste. There is no record of the materials/substances disposed of on the land. There is the potential for contamination to be present on site but no information in the form of a phase 1 desk top assessment has been submitted to allow an assessment to be made of whether the land is, or can be, made fit for human habitation. It has not, therefore, been demonstrated that the proposed development has been designed to take account of ground contamination, as required by Shropshire Core Strategy policy CS6.

- 1.5 Following on from this a further application was submitted under 11/04897/FUL on 26th October 2011 and this was subsequently refused again for the following reason on 17th July 2012:

The site is situated within the Green Belt where there is a presumption against inappropriate development. The stationing of a residential gypsy mobile home is inappropriate development that would erode the openness of the Green Belt and detract from the visual amenity and rural character of the area. No very special circumstances of sufficient weight have been demonstrated to justify a departure from Green Belt policy. The proposal is therefore contrary to Shropshire Core Strategy policies CS5, CS6 CS11 and CS12, the Bridgnorth District Local Plan saved policy S3, the National Planning Policy Framework section 9: Protecting Green Belt Land, and policy E of the Planning Policy for Traveller Sites.

- 1.6 Following on from this refusal, an appeal was submitted to the Planning Inspectorate. The Planning Inspector who dealt with the appeal considered that based on the personal circumstances of the applicant a temporary five year planning permission should be granted. However, the appeal was subsequently recovered by the Secretary of State who disagreed with the conclusions of the inspector and refused planning permission.
- 1.7 Following on from this decision the applicant joined a class action against a host of decisions relating to Gypsy and Traveller appeals that had been recovered by the Secretary of State. The timeline of which is set out below.

1.8 **Shane Roberts v Secretary of State for Communities and Local Government and Shropshire Council – CO/37/2015 & CO/130/2015**

1. Appeal against the Secretary of States ("the SoS") decision to refuse to grant permission for a change of use of the land to a "...private gypsy and traveller caravan site comprising one mobile home and two touring caravans.." under s288 Town and Country Planning Act 1990 ("the 1990 Act"); and
2. Judicial review challenge to the SoS decision not to de-recover the appeal

following the judgement in Moore and Coates v SSCLG [2015] EWHC 44 (Admin)

Timeline of events (17 July 2012 to present):

- 17 July 2012 – Shropshire Council refused Mr Robert’s application for planning permission for change of use of land at The Round House, Fenn Green, Alveley, Shropshire – Mr Roberts subsequently appealed that decision under s78 of the 1990 Act
- The SoS appointed an inspector to determine the appeal which was conducted via a hearing on 6 March 2013
- SoS directed recovery of the appeal on 3 July 2013 and the Inspector provided a report on the same date in which he recommended granting temporary permission
- On 27 November 2014, the SoS issued his decision disagreeing with the inspector’s recommendation and dismissing the s78 appeal
- On 6 January 2015, Mr Roberts issued an application under s288 of the 1990 Act seeking an order to quash the 27 November 2014 decision – CO/37/2015
- On 11 May 2015 - Mr Roberts issued a further claim (CO/130/2015) challenging the SoS decision not to de-recover his appeal following the judgement in Moore and Coates v SSCLG [2015] EWHC 44 (Admin)
- The Council did not make any representations in this matter as the Interested Party, the SoS filed and served an acknowledgment of service confirming that they would be contesting these claims
- The Roberts case, via consent order, along with others, were stayed pending the determination of Mulvenna v SSCLG (C1/2016/0374) and Connors v SSCLG (C1/2014/2651) which were conjoined by the Court of Appeal as they shared a common point of principle, namely the effect, if any, of an unlawful decision to recover a planning appeal on the subsequent substantive determination of that appeal
- The Mulvenna case was heard in May 2017 and reserved judgement was handed down on 17 November 2017 with the Court of Appeal dismissing both appeals – see [2017] EWCA Civ 1850
- The appellants in Connors applied to the Supreme Court for permission to appeal (UKSC 2017/0233)
- The appellants in Mulvenna confirmed they had the intention to do the same but subject to obtaining public funding and as subsequently their time limit for applying to the Supreme Court was extended to 28 days after the final determination of the application for funding
- The Roberts case, along with others, was further stayed further pending the application for permission to appeal to the Supreme Court in the Connors case and awaiting the outcome of the Mulvenna public funding application

which was still pending

- On 18 February 2019 the Council was notified that the public funding application for Mulvenna was refused but had been appealed and a further 2 month stay was agreed until the outcome of the appeal
- 29 April 2019 the Council was notified that Ms Mulvenna's Supreme Court public funding appeal had been adjourned to an oral hearing yet to be scheduled and a further 2 month stay was requested
- By Order dated 27 June 2019, the Council was notified that the Supreme Court had refused permission to appeal in the Connors case. The permission decision for the Mulvenna case had been suspended pending confirmation of Mulvenna's public funding appeal which was listed for 10/11 September 2019
- By email dated 06 August 2019 the solicitor for the Government Legal Department wrote to Angus Murdoch (Shane Roberts legal representative) setting out that the Mr Roberts s288 claim raises similar ground of to those pursued in the Connor and Mulvenna case in particular grounds 5-9) inviting Angus to withdraw the claim and should Mr Roberts continue with the claim to withdraw the afore mentioned grounds – to which and based on my records no response was received
- The Mulvenna public funding appeal was subsequently pushed back on numerous occasions for numerous reasons including a panel member getting ill (apparently catching COVID-19) and a further stay was requested until 1 June 2020
- By email dated 2 June 2020, the Government Legal Department confirmed that the legal representative for Mulvenna has confirmed he had no further instructions/funding to pursue the Supreme Court application
- By email dated 30 June 2020 the Government Legal Department contacted Angus in relation to; (1) CO/2130/2015 and inviting him to agree to the stay to be lifted and the claim dismissed accordingly, with costs and (2) CO/37/2015, again, inviting them to agree to the claim to be dismissed, with costs or in the alternative to withdraw grounds 5-9 of the claim which following the Connors case they considered had no prospects of success
- By email dated 1 July 2020, Angus Murdoch notified the parties that his client Shane Roberts passed away in 23 August 2018. The Government Legal Department noted that Mr Roberts family was still living on the site and requested confirmation whether they will continue to pursue this matter
- Legal Services have chased a further update on this matter from the Government Legal Department and kindly requested that they should apply to the Court to have both matters dismissed accordingly in the absence of an indication from applicant that they want to continue with the litigation.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is situated within the Green Belt, to the south of the Alveley village development boundary. The application site is a small grassed paddock sandwiched between the A442 to the west and a minor country lane to the east. To the south of the site is the Round House a residential property which sits on the junction of the A442 and the lane which runs in front of the site.
- 2.2 It is bounded by hedging to the side boundaries with more mature hedge screening to the rear boundary and a post and rail fence on the boundary with the A442. Vehicular access to the site is gained via the lane to the rear of the site.
- 2.3 This site is situated in a prominent countryside location distinctly removed from the main recognised settlement of Alveley. The site is sandwiched between the A442 from Kidderminster to Bridgnorth, and the unclassified public highway giving access from the A442 to Alveley village.
- 2.4 The predominant character of the area is that of open countryside with some sporadic minor settlements and isolated dwellings interspersed in the landscape.
- 2.5 Despite a degree of screening by boundary trees, the development is still visible to substantial passing motorists passing the site on the A442.
- 2.6 It is noted that additional conifer planting has taken place. The planting of leylandii species around a boundary perimeter tends to draw attention to a site; it gives it a domestic, suburban character. It may well obscure the development from view but it does little to successfully assimilate the development into the rural landscape.

3.0 **REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The Parish Council has expressed a view contrary to the officer recommendation and the Shropshire Council Ward Member has requested Committee determination. The Principal Officer and Chair and Vice-Chair of the South Planning Committee in consultation consider the application warrants committee determination due to recent site history and the matters to be weighed in the planning balance here with respect to the occupants and the Green Belt.

4.0 **Community Representations**

4.1 - Consultee Comments

- 4.1.1 **Alveley and Romsey Parish Council** – . The Parish Council supports the application for a permanent establishment of no more than three residential caravans on this site, subject to a requirement for immediate testing of any area where groundworks are required to confirm that the ground is free from contamination.

4.1.2 **Highway Authority** - The proposal is likely to be acceptable from a highways and transport perspective. The access is of suitable layout and material to serve the development and the Design and Access Statement refers to 2 car parking spaces per pitch being provided which is acceptable (with just 1 car and 1 LGV being on the site as detailed in the application form).

However in order for the proposed development to be appropriately assessed, the following information is required to be submitted, by the applicant:

- Visibility splays should be submitted, on a plan. The splays should be commensurate with the actual free-flow speed of traffic passing the site.
- The applicant owns a larger area than that proposed in this application – is there any plans for any further residents and/or caravans? This is to inform an assessment of the vehicular movements and suitability.
- The Design and Access Statement refers to Planning Policy for Traveller Sites (2015) where the definition of traveller includes those that “...have ceased to travel temporarily...” which seems to be relevant to the families on site, who have been on site since 2011. However, confirmation is sought as to the future movements of any caravans to assess in terms of vehicular movements.

4.1.3 **Local Lead Flood Authority** - The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority.

A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document.

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

4.1.4 **SC Regulatory Services** – In 2011/2012, Regulatory Services were consulted on and provided comments on two planning applications (11/01163/FUL & 11/04897/FUL) in respect of contaminated land, due to concerns about the infilling of a historic swimming pool that used to occupy part of the site.

A report by Ground Investigation Specialists Ltd (GIS), ‘Desk Study & GeoEnvironmental Investigation for New Mobile Home on Land North of Genva, Fenn Green Alveley; Report No.1077, Jul/Aug 2011’ was submitted to support

these applications

The results of the ground investigation identified asbestos fibres in near surface soils (TP1 – chrysotile; TP4 – chrysotile and amosite).

Therefore, in a memorandum dated 20th June 2012, Regulatory Services advised the following:

I have reviewed the Desk Study and Geoenvironmental Investigation report (No.1077) submitted with the above application. The site investigation found evidence of asbestos fibres in two of the samples taken from the site. Asbestos fibres are only hazardous if they are made airborne and hence would only be considered a risk if the soil is disturbed in any way. Expert advice should be sought to assess the risk from asbestos contamination and develop an appropriate remediation scheme for the site. The scheme should detail what mitigation measures are going to be implemented to control any identified risk from asbestos fibres.

In principle, there are no substantive objections to the proposed end use of the site, but it is important that a remediation scheme is submitted and approved prior to any works starting on site.

Accordingly, if the application is successful, I recommend that the following conditions be attached to any approval:

Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until the condition detailed below has been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

G1 Contaminated land

- a) *No development shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contaminated on the site. The Site Investigation Report shall be undertaken by competent person and be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The Report is to be submitted to and approved in writing by the Local Planning Authority.*
- b) *In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.*
- c) *The works detailed as being necessary to make safe the contamination shall be*

carried out in accordance with the approved Remediation Strategy.

- d) *In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to the approval in writing by the Local Planning Authority.*
- e) *Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.*

Reason: *To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to human health and offsite receptors.*

The above applications were both refused and as far as we know, the conditions recommended by Regulatory Services were not acted upon.

This application is again for use of the land as travellers caravan site, comprising of 3 caravans, but is retrospective and the supporting planning, Design and Access Statement confirms occupancy of the site since 2011.

Potential risks from asbestos fibres in near surface soils were identified in 2011 and as stated above, Regulatory Services is not aware of any further assessment or remediation works at the site and therefore there remains a potential risk in respect of the residential use of the land.

Given that there is insufficient information concerning the risks posed by asbestos in near surface soils and there is no detailed risk assessment or methodology on how these potential risks will be managed, Regulatory Services requires further assessment/remediation to manage the potential risks.

It is possible that more detailed quantification to identify the % asbestos fibres in soil could be carried out to inform any risk assessment.

Therefore, having regard to the fact that the GIS site investigation identified potential risks but did not recommend any remedial works, the following conditions are required:

- a) A site investigation has identified potential risks from asbestos in near surface soils and a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The

Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- b) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
- c) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (a) above, which is subject to the approval in writing by the Local Planning Authority.
- d) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to human health and off site receptors.

- Public Comments

9 Objections have been received. The full comments may be viewed on the file and are summarised below:

4.2

- Contrary to Green Belt policy
- No Special Circumstances
- The applicants are not travellers they have lived on the site 9 years without moving
- The applicants are not part of the community as they claim and there is no local connection
- Applications to build houses for local people in the Green Belt have been refused and this application should be treated the same
- Granting approval will set undesirable precedent
- Existing Development unauthorised and should be enforced against
- Site is contaminated and dangerous to health
- Plans submitted are incorrect and show a larger site than is owned by the applicant
- Granting consent would be a green light for further expansion of the site in the future
- Should consent be granted then strict limitations need to be placed on the site and enforced

- Previous applications refused and should be refused again

5.0 THE MAIN ISSUES

Principle of Development
 Personal Circumstances
 Siting, scale and design of structure
 Visual impact and landscaping
 Highway Safety
 Residential Amenity
 Flood Risk and Drainage
 Land Contamination
 Planning Balance

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 The relevant Development Plan Policies are provided within the Shropshire Core Strategy (2011); Site Allocations and Management of Development Plan (2015); Sustainable Design SPD (July 2011) and National Planning Policy Framework (NPPF) (2019). The DCLG Planning Policy for traveller sites' (August 2015) also needs to be taken into account. Those policies of relevance to the proposal are considered below as part of the appraisal.

6.1.2 The planning policy context for this development is that the site falls within the Green Belt. The National Planning Policy Framework advises at paragraph 143 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It continues at paragraph 144 stating:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist until the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

6.1.3 The change of use and structures to which this application relates constitute inappropriate development in the Green Belt, as confirmed by the DCLG ‘Planning policy for traveller sites’, August 2015, Policy E which relates specifically to Traveller Sites in Green Belt. It states at paragraph 16 that:

“Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.”

6.1.4 At Policy H (Decision taking) of the above DCLG policy document a number of issues are set out as relevant matters when considering applications for traveller

sites. These are set out in paragraph 24 as:

- a) The existing level of local provision and need for sites
- b) The availability (or lack) of alternative accommodation for the applicants
- c) Other personal circumstances of the applicant
- d) That the locally specific criteria to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) That they should determine applications for sites from any travellers and not just those with local connections.

6.1.5 However it does re-iterate paragraph 16 quoted in 6.1.1 above with respect to the Green Belt.

6.1.6 There is a requirement under paragraph 25 of the DCLG policy for local planning authorities to very strictly limit new traveller sites in open countryside that is away from existing settlements or outside areas allocated in the development plan. It continues that sites in rural areas should respect the scale of, and not dominate, the nearest settled community and avoid placing an undue pressure on the local infrastructure. Paragraph 26 states when considering applications local planning authorities should attach weight to the following matters:

- a) Effective use of previously developed (brownfield), untidy or derelict land
- b) Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- d) Not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

6.1.7 It continues at paragraph 27 by stating that where a local planning authority is unable to demonstrate an up-to-date 5 year supply of sites, that this would be a significant material consideration when considering applications for the grant of temporary planning permission. It clarifies however that there are some exceptions to this statement, which include where the proposal is on land designated as Green Belt.

6.1.8 Shropshire Core Strategy policy CS5 relates to the Countryside and Green Belt and seeks to restrict housing to house agricultural, forestry or other essential countryside workers and other affordable housing/accommodation to meet a local need in accordance with national planning policies and policies CS11 and CS12. It advises that there will be additional controls over development in the Green Belt in line with Government Guidance. SAMDev Plan policy MD6 also relates to the Green Belt, requiring it to be demonstrated that proposals do not conflict with the purposes of the Green Belt.

6.1.9 Shropshire Core Strategy Policy CS12 relates to Gypsy and Traveller provision and

pre-dates both the National Planning Policy Framework (NPPF) and the August 2015 DCLG Planning policy for traveller sites. It states that sites will be allocated to meet identified needs and would be supportive of suitable development proposals close to Shrewsbury, the Market Towns, and Community Hubs and clusters. The policy also indicates that suitable development proposals for small exception sites (under 5 pitches), where a strong local connection is demonstrated, may be acceptable under policy CS5 (Countryside and Green Belt). It was anticipated when the Core Strategy was adopted that the provision of new sites would be largely made in the Site Allocations and Management of Development (SAMDev) Plan. However, in the event the SAMDev Plan adopted in December 2015 does not include site allocations for this purpose. The matter was considered by the SAMDev Inspector in her October 2015 report at paragraphs 71 to 79 (Issue 3). It was the Inspector's conclusion that the Council will be able to demonstrate a five year supply of pitches and sufficient supply for the remainder of the plan period, having regard to the expected turnover of pitches on Council owned sites. She stated that the evidence confirms that it is not necessary for the SAMDev Plan to make further provision to meet the accommodation needs of the gypsy and traveller community and travelling show persons.

- 6.1.10 The latest assessment of the need for gypsy and traveller and travelling show persons accommodation in Shropshire (2019) was published in February 2020. It summarises the need for gypsy and traveller pitches, transit pitches and travelling show person's plots in Shropshire as assessed in the Gypsy and Traveller Accommodation Assessment 2014 (updated January 2015), with the SAMDev Plan Inspector's Report (20th October 2015) providing additional clarification of baseline figures.
- 6.1.11 The calculation of pitch/plot requirements in the GTAA is based on DCLG modelling as advocated in the withdrawn document, *Gypsy and Traveller Accommodation Assessment Guidance* (DCLG, 2007). The DCLG Guidance requires an assessment of the current needs of Gypsies and Travellers and Travelling Showpeople and a projection of future needs. The Guidance advocates the use of a fieldwork survey to supplement secondary source information and derive key supply and demand information.
- 6.1.12 As of July 2019, there were a total of 148 Gypsy and Traveller Pitches across Shropshire (147 permanent authorised and 1 private tolerated). The GTAA 2019 has evidenced an overall cultural need for 113 additional pitches over the plan period to 2037/38 and as a subset of this number a PPTS need for 43 pitches. However, there is evidence of a high degree of turnover on existing pitches which offsets identified need. Detailed site management data reports an annual average of 11 pitches coming available for occupancy over the past 5.5 years. If turnover from households moving between pitches from within the County is excluded, the annual average turnover is 9.3 or 205 over the plan period - exceeding the level of identified need.
- 6.1.13 It is recommended that the Local Plan acknowledges the overall need (excluding turnover) for 113 additional pitches based on a cultural interpretation of need and

43 based on a PPTS interpretation of need. For the purposes of planning policy, it is however concluded that turnover on local authority pitches is expected to address this need, and that there is no current requirement for site allocations or the identification of sites for longer term provision. Although there is no overall shortfall in pitches once turnover is considered, the Council should continue to consider planning applications through its criteria-based policy for appropriate small sites to address any arising needs of Gypsy and Traveller families should they be forthcoming over the plan period.

- 6.1.14 The Council's Gypsy Liaison Officer has verified that the applicant and the occupiers of the site are all Romany Gypsies.
- 6.1.15 While taken on their own the latest Shropshire Council figures, when turnover is taken into account, indicate that there is no shortfall in provision in Shropshire, account needs to be taken of the geography of the Bridgnorth area, effectively bounded to the east and south by Authorities with a shortfall in provision, and the information provided by the Council's Gypsy Liaison Officer to the effect that there are no pitches available at present on Council operated sites to accommodate the applicants.
- 6.1.16 The above national planning policy and Development Policy context demonstrates that any shortfall in Shropshire to providing a 5 year supply of deliverable pitches, the condition of the land and the personal circumstances of the adults are unlikely to amount to very special circumstances sufficient to justify inappropriate development in the Green Belt. The weight to be accorded to the best interests of the children in addition to any other positive attributes that the site has for the use sought is considered in the Planning Balance section of the report below.
- 6.1.17 In addition to the issue of harm to the Green Belt caused by the inappropriateness of the proposed use and associated built development, consideration must also be given to whether a key characteristic of Green Belt – openness – would be harmed. Openness is both a feature of the quantum of development and the visual impact of the proposal. (Court of Appeal judgement in *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466). In this case the structures comprising of one static caravan, two touring caravans, storage structures and parked vehicles would, by their very presence, impact upon openness in comparison with the previous agricultural use of the land. However, all these items are concentrated in an area along the back edge of the site adjacent the high hedgerow and the visual impact is limited due to the extent of the hedgerows surrounding the site, although still clearly visible to passing traffic travelling along the A442. The harm to openness is considered to be significant in this case and is a matter to which weight must be attached. This factor is also included in the Planning Balance below. It is considered that a decision to permit this application would need to be referred to the Secretary of State as a departure from the development plan with reference to the relevant guidance.

6.2 Personal Circumstances

- 6.2.1 Policy CS12 advocates support for suitable development proposals for small exception sites (under 5 pitches) in accordance with Policy CS5, where a strong local connection can be demonstrated. In this particular case the applicant's family has lived on this site since 2011. The two siblings of the applicant a son and daughter have lived on the site from a young age and now both have or are expecting young families of their own. The children resident on site are currently of an age where they do not attend school at present.
- 6.2.2 The presence of children of school age has in the past been a strong argument for allowing Gypsy and Traveller pitches in terms of personal circumstances, but as the children are currently too young to attend school then this does not present a particularly compelling reason to deviate from Green Belt policy.
- 6.2.3 The applicant has not offered any other compelling evidence to support the application except a local connection which is based on the family occupying the site for the last 9 years whilst the planning and judicial process has rumbled on.
- 6.2.4 It is therefore considered that there are no overwhelming personal circumstances that would lead to the conclusion that on balance the personal circumstances of the applicant should override other material planning considerations in this instance.
- 6.3 **Siting, scale and design of structure**
- 6.3.1 Core Strategy policy CS6 seeks to ensure that development is appropriate in scale, density, pattern and design taking into account the local context and character. SAMDev policy MD2 requires development to respect locally distinctive or valued character and existing amenity value.
- 6.3.2 The three pitches are sited in open countryside within the Green Belt. It is located away from the nearest settlement of Alveley which lies to the north. The development is not related to any other development in the locality and appears as an isolated feature in the landscape. The site is screened from view by a well-established hedgerow along the boundary with the highway. The site itself though is very open in character and performs an important role in the Green Belt. It is therefore considered that the proposal will result in substantial harm in terms of Green Belt and its purpose.
- 6.3.3 Policy CS12 advocates support for suitable development proposals for small exception sites (under 5 pitches) in accordance with Policy CS5, where a strong local connection can be demonstrated. In this particular case the local connection relates to the time the site has been occupied by the applicants family which amounts to 9 years. However, policy CS12 pre-dates both the current NPPF and the DCLG Planning Policy which must therefore assume greater weight as a material consideration in this context.
- 6.3.4 Policy CS6 and Policy MD2 relate to the sustainability of development and in this case the isolated location of the site away from any local amenities mean that it is not considered to be a sustainable location. There are no shops, schools, medical facilities within easy walking distance and therefore the development would

promote vehicular use to get to any amenities as the site. Policy B of the DCLG Planning Policy for Travellers sites makes it clear that the same considerations for sustainability of housing sites should be applied to Gypsy and Traveller sites and given this site is in an isolated location it is considered that it is contrary to principles of sustainable development.

6.3.5 The Green Belt location of the site in open countryside means that the development is considered to be inappropriate in policy terms as it impacts on the openness of the Green Belt. Maintaining the openness of the Green Belt is a primary objective of both national and local policy and as such development which negatively impacts on this aim must be considered to be inappropriate development in this context.

6.4 **Visual impact and landscaping**

6.4.1 A primary function of the Green Belt is to protect the openness between settlements and prevent them merging into one another.

6.4.2 The site is well screened from view and views in and out of the site are very limited by due to the mature hedgerow which bounds the site on three sides. The nature of the site situated in open countryside which is interspersed with sporadic residential properties means that whilst it is designated as Green Belt it is also strategically important in this respect in terms of the aims of National Green Belt policy.

6.4.3 It is noted that additional conifer planting has taken place. The planting of leylandii species around a boundary perimeter tends to draw attention to a site; it gives it a domestic, suburban character. It may well obscure the development from view but it does little to successfully assimilate the development into a rural landscape.

6.4.4 The use of the land for the siting of a static mobile home, the provision of hardstanding for two touring caravans and the improvements to the existing access will all result in the character of the site assuming the appearance of a permanent residential development.

6.4.5 The residential caravan development, with all its associated domestic activity and paraphernalia, would appear as an alien feature, out of keeping with its rural location. The development could be further screened by additional landscaping within the field. That being said, the development proposed would create a degree of adverse impact on its rural surroundings such that it would fail to maintain and enhance countryside character and in particular it will undermine the openness of the character of the green belt.

6.4.6 The development is contrary to the preservation of the open countryside, and the protection of the Green Belt and its acknowledged importance in terms of its openness. Weight is also to be apportioned to this consideration.

6.5 **Highway Safety**

6.5.1 The NPPF, at section 9, seeks to promote sustainable transport. At paragraph 108 it states that decisions should take account of whether safe and suitable access to the site can be achieved for all users and whether improvements can be

undertaken to improve highway safety that cost effectively mitigate the impact of the proposal. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety

- 6.5.2 Core Strategy policy CS6 seeks to ensure that proposals likely to generate significant levels of traffic be located in accessible locations, where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel reduced. It seeks to achieve safe development and pertinent matters to consider include ensuring the local road network and access to the site is capable of safely accommodating the type and scale of traffic likely to be generated.
- 6.5.3 The site is accessed from an unclassified country lane which links the A442 to the centre of Alveley. The lane is wide enough to accommodate single file passing traffic.
- 6.5.4 The entrance to the site comprises a pair of substantial timber gates with a thick leylandii hedge running along the back of the carriageway, screening the site from this road. The hedgerow does however interfere with visibility for vehicles leaving the site and the Highway Authority have requested that sight lines be provided and maintained to ensure highway and pedestrian safety should consent be granted.
- 6.6 **Residential Amenity**
- 6.6.1 Core Strategy policy CS6 seeks to safeguard residential amenity. The site is in an isolated location. Therefore the impact of the development on the amenities of neighbours is unlikely to be harmful in terms of overlooking and privacy considerations.
- 6.6.2 The development will however be visually prominent in the landscape and does impact on the outlook and visual amenities of the locality. Whilst, the leylandii hedgerow does screen the development to an extent, it will be much more visually intrusive in the landscape during the winter months. It is therefore considered that is visual impact on the Green Belt and the landscape character of the area is unacceptable.
- 6.7 **Flood Risk and Drainage**
- 6.7.1 The site is within Flood Zone One so is not susceptible to a significant flood risk. The LLFA have requested that a sustainable drainage scheme be implemented on the site.
- 6.7.2 Core Strategy policy CS18 relates to sustainable water management and seeks to ensure that surface water will be managed in a sustainable and coordinated way, with the aim to achieve a reduction in the existing run-off rate and not result in an increase in run-off. The Council's Drainage Team have assessed the proposal and are content that the drainage matters could be addressed through an informative on any planning permission that is issued, given the land area available and that it is not within a flood risk zone.

6.8 Land Contamination

- 6.8.1 The Parish Council and several objectors have raised concerns in relation to the site being contaminated.
- 6.8.2 Land Contamination was the second reason for refusal on the first application. In support of the subsequent application the applicant submitted a Desk Study and Geo-environmental Investigation Report.
- 6.8.3 The site investigation found evidence of asbestos fibres in two of the samples taken from the site. The findings contained within the report were considered by the Council's Public Protection Specialist Officer at the time. Confirmation has been received that the likely contamination is not so deleterious as to preclude development.
- 6.8.4 The nature of the development, being use of land, involves minimal ground disturbance unlike building works associated with a permanent structure.
- 6.8.5 Third parties have raised concern regarding the efficacy of the report submitted. However, it was been prepared by a specialist firm and there is no evidence to suggest the information contained therein is anything but sound.
- 6.8.6 A condition is recommended for inclusion by the Council's Regulatory Services team, and this should give further assurances that the land is safe to be developed as proposed.

6.9 Planning Balance

- 6.9.1 There is a presumption against inappropriate development in the Green Belt. The use of the land as a gypsy traveller site is inappropriate development in the Green Belt and permission should only be granted if very special circumstances are identified. The NPPF advises at paragraph 144 that very special circumstances will not exist unless the harm to the green belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. A key characteristic of Green Belts is openness, to which there would be moderate harm by the presence of structures and caravans on this land. Substantial weight must therefore be attached to the harm to the Green Belt caused by the development.
- 6.9.2 There are a number of other factors to weigh in the planning balance against this harm to the Green Belt, which are considered to be material planning considerations, and these are set out below:
- 6.9.3 It has been established that there is currently no provision available on existing Shropshire Council sites to accommodate this extended family group and adjacent authorities in their GTAA assessments acknowledge under provision of sites. This must be tempered by paragraph 27 of the DCLG Planning Policy for traveller sites (DCLG 2015) which states that even if a LPA is not able to demonstrate a 5 year supply (Shropshire Council's position is that it has sufficient supply if turnover is taken into account), the absence of such a supply is not a significant material consideration where a proposal is within the Green Belt.

- 6.9.4 Whilst it is not for individual planning applications to review Green Belt boundaries (Policy E DCLG 2015) the observation can be made that, with regard to the five purposes of the Green Belt set out in paragraph 134 of the NPPF, the site is located in open countryside within the allocated Green Belt in the adopted SAMDev Plan. The site plays an important role in checking unrestricted urban sprawl, acts as a buffer zone preventing neighbouring settlements merging and assists in preventing encroachment into the countryside. By tightly controlling development in the Green Belt this also encourages the redevelopment of brownfield sites. The site given its open nature plays an important part in the visual amenities and rural character of the area.
- 6.9.5 The applicant has been confirmed by the Council's Gypsy Liaison Officer to be Romany Gypsy, and the applicant and her family are confirmed as having resided on this site since 2011. Whilst, the applicant has put forward personal circumstances to justify a relaxation in Green Belt policy, Policy E, paragraph 16 of DCLG 2015 advises that personal circumstances are unlikely to clearly outweigh the harm to the Green Belt.

For the purposes of planning policy the Annex 1: Glossary defines gypsies and travellers as "*Persons of nomadic habit 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, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*"

- 6.9.6 In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:
- whether they previously led a nomadic habit of life
 - the reasons for ceasing their nomadic habit of life
 - whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.
- 6.9.7 The site is isolated from village facilities being situated out in open countryside. It is therefore considered to be in an unsustainable location. Paragraph 13 of Policy B of DCLG 2015 states that LPAs should ensure traveller sites are sustainable economically, socially and environmentally and should ensure that, among other matters which are listed, site locations ensure that children can attend school on a regular basis. The location of this site fails to satisfy these requirements.
- 6.9.8 Weight must therefore be attached to the unsustainable nature of the site identified above. The family group on this site consists of three generations, but no children of school age. There are no other immediate or extended family members resident on this site or in the immediate locality and it is therefore considered that, in the light of the contents of the DCLG Planning Policy for Gypsy Sites August 2015 (DCLG 2015), the planning balance in this case would be such that no very special circumstances to outweigh the harm to the Green Belt have been advanced, which

would justify a departure from the adopted Development Plan.

- 6.9.9 Whilst, paragraph 13 of DCLG 2015 references the need to ensure that children can attend school on a regular basis. The contents of Policy E of DCLG 2015 relating to Traveller Sites in Green Belt is prefaced by “Subject to the best interests of the child...” The applicants at present have no children of school age resident on site at present, although there are two children of pre-school age with a further baby due in the near future. The children are not of primary school age and therefore not registered to attend a local school at present. Whilst it is considered that the future needs of the children are a material consideration relevant to the determination of this application, it is not considered an overriding factor. On balance this consideration, when coupled with the negative attributes of the site identified, cumulatively are not considered to amount to very special circumstances of sufficient weight to outweigh the harm to the Green Belt in this particular case.
- 6.9.10 Policy H of The DCLG Planning Policy for Travellers sites is clear that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Given the Green Belt designation of this sites these other material considerations would have to constitute ‘very special circumstances.’ The case put forward by the applicant does not provide a compelling case as to why this site is required above any other and is essentially based on the site being in the ownership of the family. Clearly, many people own land in the Green Belt and all are subject to the same restrictions in terms of developing their land. To allow such a development would set an undesirable precedent and in the absence of any compelling evidence to the contrary as to why it is necessary to be located at this site as opposed to another more appropriate site it is clear that this proposal also conflicts with the settlement policies of the SAMDev Plan namely MD7a and S3, along with Policy CS12 of the Core Strategy which relates to Gypsy and Traveller sites.
- 6.9.11 Whilst the scale of the site does not dominate the nearest settled community and impact on local infrastructure (Para. 25 of DCLG 2015), it's countryside location means that it unduly impacts on the openness of its surroundings which is exacerbated by the leylandii hedgerow which has been planted around the site to screen it from view.
- 6.9.12 The site is not close to village facilities which include a range of shops, health facilities and a primary school. Paragraph 13 of DCLG 2015 states that LPAs should ensure traveller sites are sustainable economically, socially and environmentally and should ensure that, among other matters which are listed, site locations ensure that there is access to appropriate health services, the need to ensure that children can attend school on a regular basis. The contents of Policy E of DCLG 2015 relating to Traveller Sites in Green Belt is prefaced by “Subject to the best interests of the child...” On this site there are children, but these are all below primary school age at present.
- 6.9.13 A further consideration to bear in mind relates to the letter dated 31 August 2015, from the then Department of Communities and Local Government Chief Planner

Steve Quartermain, to Chief Planning Officers which enclosed a) statement which sets out revisions to National Planning Policy to make intentional unauthorised development a “material consideration” when determining appeals and retrospective planning applications. The policy applies to all new planning applications and appeals received from 31 August 2015. The statement does not define what intentional unauthorised development is. The only explanation given is that developing land without prior authorisation prevents measures being taken to mitigate or limit the harm that would be caused and that taking enforcement action against unauthorised development costs Local Planning Authorities (LPAs) time and money.

6.9.14 Having considered the merits of the case, it is difficult to make a reasoned justification for granting planning permission in the circumstances. The Local Planning Authority have previously refused planning permission for the development twice and a subsequent appeal was dismissed by the SoS. The only significant change in circumstances is that this application is retrospective, which is not a reason in itself to grant consent. It is therefore concluded that the harm to the openness of the Green Belt significantly outweighs the personal circumstances put forward as justification for a departure from the development plan and as such planning permission should be refused.

7.0 **CONCLUSION**

7.1 The applicant has failed to advance any special or personal circumstances to support the application, which outweigh the Development Plan policies relating to Green Belt. With this in mind the proposal is considered to be inappropriate development in the Green Belt and therefore contrary to both national and local planning policy. Given the site is located in open countryside as well the development will appear as a prominent intrusion in the landscape and as a stand alone proposal it is difficult to find any justification to support its location here except that the site has been acquired by the applicant.

7.2 The site is located in the Green Belt and is considered to be strategically important in terms of the Green Belt as it is situated in open countryside. Therefore, allowing the site to become a permanent Gypsy and Travellers site would create an undesirable precedent which would encourage others to follow this example. The NPPF and DCLG guidance is clear on this that it should be done through the development plan process rather than through the planning application process.

7.3 The site is not in a sustainable location being situated in an isolated countryside area with poor access to amenities, such as shops, schools and medical facilities. The location of the site means that the majority of trips emanating to and from the site will be by motor vehicle as the distance to amenities means that walking is not an attractive alternative.

7.4 Balancing the main planning considerations, as a matter of judgement the clear harm identified to the countryside and in particular the green belt, contrary to Shropshire Core Strategy Policies CS5, CS6 and CS12 and Policies MD6 and

MD7a of the SAMDev Plan would not be outweighed by the general and personal needs of the applicant and her family to an extent sufficient to justify the permanent permission sought. Refusal is therefore recommended.

7.5 Finally, given the applicant and their family have resided on this site for 9 years, if the recommendation to Refuse planning permission is supported, then it will also be expedient to serve an enforcement notice requiring the use of the site to cease. If an authorised use continues on a site for a period of 10 years without an enforcement notice being served then the use becomes immune from enforcement action and the applicant can then apply for a Certificate of Lawfulness. Given that any refusal of planning permission is likely to be appealed to the Planning Inspectorate it is imperative that an enforcement notice is served to stop the clock in relation to the use becoming lawful.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework
Planning Policy for Traveller Sites

Shropshire Core Strategy and SAMDev Plan Policies:
CS1 - Strategic Approach
CS5 - Countryside and Greenbelt
CS6 - Sustainable Design and Development Principles

CS12 - Gypsies and Traveller Provision
CS17 - Environmental Networks
CS18 - Sustainable Water Management
MD1 - Scale and Distribution of Development
MD2 - Sustainable Design
MD6 - Green Belt & Safeguarded Land
MD7A - Managing Housing Development in the Countryside

Settlement: S3 – Bridgnorth Area

RELEVANT PLANNING HISTORY:

10/03292/FUL Formation of gypsy caravan site to accommodate 3 caravans installation of septic tank drainage system INV

11/01163/FUL Formation of gypsy caravan site to accommodate 3 caravans; installation of septic tank drainage system REFUSE 21st June 2011

11/04897/FUL Change of use of land to private gypsy and traveller caravan site REFUSE 18th July 2012

Appeal

12/01996/REF Change of use of land to private gypsy and traveller caravan site DISMIS 27th November 2014. Recovered by Secretary of State

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Planning, Design and Access Statement

Cabinet Member (Portfolio Holder)

Councillor Gwilym Butler

Local Member

Cllr Tina Woodward
