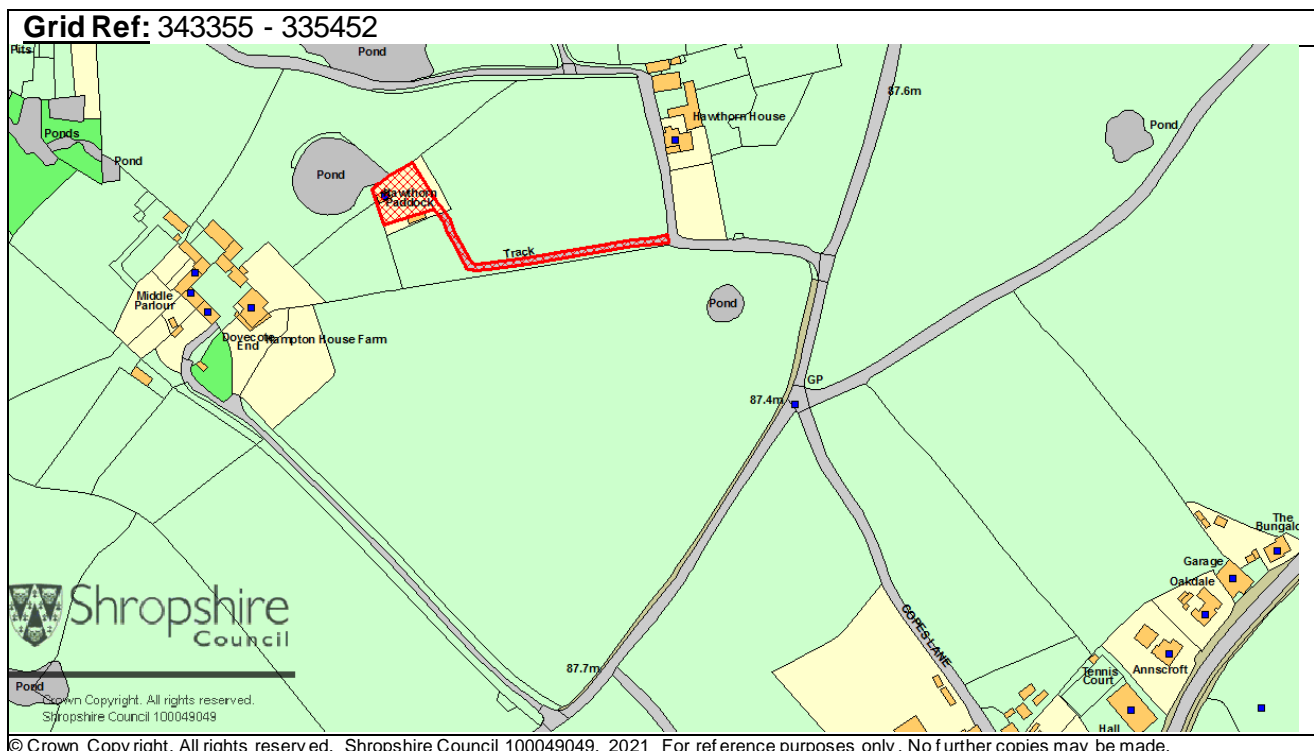


## Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

### Summary of Application

<b><u>Application Number:</u></b> 21/03044/FUL	<b><u>Parish:</u></b>	Welshampton And Lyneal
<b><u>Proposal:</u></b> Application under Section 73A of the Town and Country Planning Act 1990 for the change of use from pony paddock to single pitch gypsy/traveller site including 1No static caravan, 1No touring caravan, amenity block, works to provide gravel drive, installation of septic tank and associated works (part retrospective)		
<b><u>Site Address:</u></b> Hawthorn Paddock Welshampton Ellesmere Shropshire SY12 0NP		
<b><u>Applicant:</u></b> Mr J Doran		
<b><u>Case Officer:</u></b> Shannon Franklin	<b><u>email</u></b>	: shannon.franklin@shropshire.gov.uk



**Recommendation:- Grant a 2 year Temporary Planning Permission subject to the conditions as set out in Appendix 1.**

**1.0 THE PROPOSAL**

1.1 The application seeks retrospective planning permission under Section 73A of the Town and Country Planning Act 1990 for the change of use from pony paddock to single pitch gypsy/traveller site including 1No static caravan, 1No touring caravan, amenity block, works to provide gravel drive, installation of septic tank and associated works.

1.2 *Previously, an application at the site, referenced 20/01361/FUL was refused for the following reasons:*

1. *The site constitutes isolated development in the open countryside and is classed as a rural exception site and as no evidence has been provided to demonstrate that the applicant and/or his family have a strong local connection to the area.  
The application is contrary to the NPPF and the PTTS and local plan policy CS5 and CS12 and the housing SPD and there are no other material considerations that would outweigh conflict with these policies.*
2. *The proposed development will have a significant detrimental landscape and visual impact on the surrounding countryside with consideration to the relative isolation of the site in relationship to any other built development, and hence the proposal represents sporadic development which outweighs the need for an additional single family pitch. The proposal is therefore considered contrary to Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and M13 and paragraphs 131, 132 and 133 of the NPPF.*
3. *Whilst an ecological assessment in the form of a Phase 1 Habitat Assessment has been submitted, the siting of the proposal in such close proximity to a pond suitable for Great Crested Newts, in an area where Great Crested Newt populations have been identified is not acceptable. It will not be acceptable to develop in such close proximity to the pond and to protect common amphibian species, protected species (and other fauna associated with the pond. It has therefore not been adequately demonstrated that the proposal will 'promote the preservation, restoration and enhancement of priority habitats and ecological networks' as required by paragraph 174 of the National Planning Policy Framework and that the development would not negatively impact on wildlife and protected species and their habitat, and would not cause an offence under the Conservation of Habitats and Species Regulations (2010). The proposal is therefore contrary to policy CS6, CS17 and the NPPF.*
4. *The information contained within the submitted application does not adequately describe the designated heritage assets (Listed Buildings) in the locality and does not adequately assess the impact of the proposal on these assets in the current context and is therefore contrary to paragraph*

*189 of the NPPF. The proposal therefore has the potential to result in harm to these identified assets and fails to accord with MD13 of the SAMDev.*

- 1.2 An enforcement case at the site, referenced 20/07120/ENF, is currently being held in abeyance following the outcome of this current planning application.
- 1.3 The information submitted indicates that the proposed family gypsy pitch will only be used for residential purposes and no business use on site is intended, the applicant will continue to use the rest of the land within their ownership for the grazing of horses.
- 1.4 The single gypsy pitch will consist of 1No. static caravan for permanent residential accommodation, 1.No touring caravan to enable to the family to travel for work and an amenity block for cooking/washing which cannot necessarily be safely done within the Caravan. The amenity block provided will measure 6.0m x 6.0m with an eaves height of 2.4m and a ridge height of 4.0m.

## **2.0 SITE LOCATION**

- 2.1 The site is located in open countryside approximately 400 m north of Welshampton and 3.3km east of Ellesmere. The site lies outside the boundaries of any settlement. The nearest residential neighbours Hampton House Farm 80m to the west and Hawthorn House 150m to the east.
- 2.2 The site comprises of a large paddock with an access gate, access track and hardstanding. As the application is retrospective a touring caravan and single unit mobile home is already on site. The site is bounded by field hedging on it wider boundaries with the hardstanding complex containing the single pitch bounded in part by hedging and in part by timber fencing.

## **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The application has been referred to the committee for determination as the Planning Officer is recommending for a two year temporary planning permission, contrary to the opinion of the Local Member and the Parish Council who both object to the scheme and have provided material reasons for this objection.

As such, in accordance with the Constitution and the scheme of delegation the application has been considered by the Chair and Vice Chair, together with the Principal Planning Officer at the relevant agenda setting meeting where it has been confirmed that a committee decision is appropriate.

## **4.0 COMMUNITY REPRESENTATIONS**

### **4.1 - Consultee Comments**

#### **4.1.1 Welshampton Parish Council – 29.07.2021**

**Background:** This is not the first application to be considered for this site. Work on the site commenced prior to the submission of the first application and continued during the determination process. The first application was objected to by the Parish Council primarily due to the adverse impact to the context and

character of the immediate vicinity and the natural environment. Subsequently Shropshire Council refused the application however the site was not returned to its previous condition despite this refusal.

The second application and first to be submitted by this applicant, identified several items of works to justify the suitability of the site. The works were erroneously described as 'existing'. This is to imply acceptable previous development as opposed to the true description of alien and unauthorised features within the open countryside.

This is the third application (second application by this applicant) and has been submitted to overcome the reasons for Shropshire Council's refusal dated 4 September 2020.

### **General observations**

**Change of description of site:** originally described as 'Land West of Hawthorn House, Welshampton' then 'Development Land to the North of Welshampton' and now 'Pony Paddock'. These changing descriptions may appear to be an extremely misleading attempt to imply it is a site suitable for development.

**Description of proposal:** 'Change of use from a pony paddock' again is incorrect; the site is agricultural land used historically for accommodation/grazing.

**Unauthorised development:** In blatant disregard to the planning process the applicant, since submission of his first application, has continued to carry out unauthorised work on this agricultural site.

**Design and Access Statement:** The Statement (page 1) outlines that the initial Design and Access Statement and Supplementary Planning Statement dated 8 June 2020 submitted for application 20/01361/FUL all form part of this application. The Parish Council would highlight the comment made in its response to that application: Incorrect statements regarding the existence of mains water and metered electricity services, neither exist.

### **The Parish Council responses to application 20/01361/FUL.**

Noting the statement made within the Design and Access Statement that previous documents relating to the first application form part of this application, the Parish Council submits its responses to that application.

### **Purpose of application**

The Design and Access Statement explains the purpose of this application is to rebut the reasons for refusal of application 20/01361/FUL. The Council acknowledges it does not have the specialist expertise to assess the technical aspects of the proposed development. However, it would reiterate the comments made in response to the first application in respect of

- Policy and principle of development
- Sustainable location
- Impact on character and appearance of area

- Residential amenity

### **Connection of applicant to the local area.**

The Design and Access Statement confirms the application is not being submitted as an Exception Site as defined within the Section 6 of the Type and Affordability of Housing SPD. There are comments stating the family now have strong local connections and explaining how (pages 4 and 5). The Parish Council strongly questions the quote included on page 6 attributed to the applicant *“Following the purchase of the land and moving to the site almost two years has past.”* The Design and Access Statement for the first application confirms the applicant moved onto the site due to COVID-19 Lockdown which was in March 2020. This is only 15 months from the date of this application. The Design and Access Statement for the first application also confirmed that the site was currently registered with a close relative and was in the process of being transferred into his ownership. As the application form submitted with this application

has section 25 completed, it appears the transfer still has not been completed and registered.

The Parish Council respectfully highlight that if the application is not being submitted as an Exception Site, all comments regarding local connection are irrelevant and **not** material considerations for this application. Personal circumstances are also **not** material considerations.

The Parish Council strongly requests Shropshire Council

- refuse this planning application as per the reasons outlined for application 20/01361/FUL and above, and
- commence enforcement action immediately to deal with the unauthorised occupation and unauthorised works including those dating back to 2016 and to restore the site to its original pre- 2016 state.

The Parish Council reserves the right to add and/or amend its response following receipt of further information.

**Full copies of the Parish Councils comments and appendices are available online.**

#### **4.1.2 SC SUDS – 12.07.2021 – No Objection**

Informatives recommended.

#### **4.1.3 SC Conservation – 10.08.2021 – No objection**

Background to Recommendation: To the south west to the application site and in close proximity is Hampton House Farmhouse, a Grade II listed building with a range of curtilage listed farm buildings to its rear.

To the north east of the site is Hawthorn House which, along with an "L" range of farm buildings indicated on the 1900 mapping and appear to have retained much of its historic interest. We would therefore consider it to be a non-designated heritage asset (HA) as defined in Annex 2 of the NPPF.

In considering the proposal due regard to the following local policies and guidance has been taken, when applicable: CS6 Sustainable Design and

Development and CS17 Environmental Networks, MD2 Sustainable Design, MD13 Historic Environment and with national policies and guidance, National Planning Policy Framework (NPPF) published July 2021 and Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990.

CS5 advises that development of small scale farm diversification on appropriate sites may be acceptable, however, development which either individually or cumulatively erode the character of the countryside, will not be acceptable.

CS6 and CS17 require development to protect, restore conserve and enhance the natural and built historic environment. Its' scale, density, pattern and design taking into account the local context and character, taking into consideration landscape character assessments.

MD13 states that Shropshire's heritage assets will be protected, conserved, sympathetically enhanced and restored by ensuring proposals avoid harm or loss to significance of designated and non-designated heritage assets and ensuring that proposals affecting the significance of these assets are accompanied by a Heritage Assessment. It goes on to state that proposals which are likely to have an adverse effect on the significance of non-designated heritage assets, including their setting, will only be permitted where it can be clearly demonstrated that the public benefits of the proposal outweigh the adverse impact.

Section 16 of the National Planning Policy Framework refers to Conserving and Enhancing the Historic Environment. Paragraph 194 refers to Local Planning Authorities requiring applicants to describe the significance of heritage assets and their setting. Paragraph 197 refers to the need for Local Authorities to consider the desirability for new development to make a positive contribution to local character and distinctiveness.

Paragraphs 199-200 and 202 advises that when considering the impact of a proposed development on the significance of the designated heritage assets, great weight should be given to the asset's conservation and that any harm to or loss of, the significance of the designated heritage asset (from its alteration or from development within its setting) should require clear and convincing justification. Less than substantial harm to the significance of the designated heritage asset will be weighed against public benefits of the development, bearing in mind the great weight required by paragraph 199.

Paragraph 203 of the NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and in weighing applications that affect (directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the asset.

Recommendation: A Heritage Assessment has been submitted with this application and is broadly sufficient in reference to the requirements of para 194 of the NPPF and MD13 in terms of the proposed development and concludes that the development will "... have little negative impact on either building." This is relation to Hampton House Farm (designated heritage asset and Hawthorne House non-designated heritage asset). We would not necessarily disagree with

this statement, however, we so query the layout of the site in terms the location of the structures. We consider the proposed structures could be better sited so as to reduce the visual appearance. This should be given further consideration and in conjunction with some reinforced planting of the external boundary.

Whilst we do not object to the application from a heritage perspective, we do consider that the proposal could be better integrated into the overall site by sensitive orientation and location of the proposed structures. We also consider that the colour of the proposed structures should be recessive in the landscape and therefore materials should be agreed by condition and the colour reflect the verdant area.

We also note that there are other structures on the site which do not appear to be included within the proposal? We would advise that too many structures/intensification of use/structures on the site could cause harm due to cumulative impact and could erode the character of the countryside.

We do not consider that minor use of this site as indicated (notwithstanding the structures which are not included on the application) would cause harm to the significance of the designated heritage asset and therefore would not engage Section 66 (1) of the PLB&CA Act 1990, in this instance. However, we would suggest that permitted development rights should be restricted to ensure that no additional structures or alterations are allowed.

In considering this application special regard to the desirability of preserving the buildings and their settings, together with its features of special architectural and historic interest which it possesses, has been made in line with Section 66 (1) of the above act.

#### 4.1.4 **SC Highways – 04.08.2021 – Conditional Acceptance.**

The supporting documentation advocates that the current application is a resubmission of the earlier proposal refused under reference 20/01361/FUL. Further to the receipt of additional clarification in terms of the access route construction and for a single occupancy pitch a conditional approval from the highway aspect was submitted. On the basis that the current application is a resubmission of the earlier proposal, it is considered that, subject to the condition listed above being included on any approval, there are no sustainable Highway grounds upon which to base an objection.

#### 4.1.5 **SC Ecology- 16.07.2021 - No objection**

SC Ecology have confirmed that standing advice is applicable in relation to this application. As such subject to the imposition of appropriate conditions, the application and the submitted ecology report is considered to be acceptable.

#### **Comments made on previously refused application – 01.07.2020**

*'It will not be acceptable to develop in such close proximity to the pond.' In order to protect common amphibian species (and other fauna associated with the pond), please move the building so that a buffer of at least 10m from the pond can be maintained.'*

Note: These comments were made on the basis of the same Ecological Report accompanying the current application and the amenity building has now been re-sited and the 10m buffer included.

#### 4.1.6 **SC Gypsy Liaison – 02.09.2021 – Neutral**

The Liaison Service can confirm there are vacant pitches on 2 out of the 4 sites Shropshire Council manage.

The agent claims the council advised Travellers there is no funding to bring back the two vacant pitches on the Park Hall site, I would like to state that the Liaison service has funding available prior to the allocation of both units. The units are currently boarded up as they were vandalised when the previous occupants vacated the site. There was no communication made by the agent with the Liaison Service to substantiate the claims regarding the lack of funding available.

## 4.2 - Public Comments

4.2.1 This application was advertised via notice at the site and the Councils website. Additionally, the residents of 56 neighbouring properties were notified by way of publication of this application. At the time of writing this report, 72 representations had been received in response to this publicity.

4.2.2 The reasons for objection of the application cited in these representations are summarised below:

- The site is outside of the village on greenbelt land;
- The open spaces around the village should be kept clear of development;
- The design is not in keeping with the surrounding;
- The highways access is narrow and not appropriate for large vehicles such a caravans;
- The application will enable future development of additional caravans on the site;
- There are other sites available for the travelling community;
- There have been previous refusals at the site and this application doe not address those reasons;
- The application damages existing wildlife and ecology;
- The application site is near a Listed Building;
- The application site is visible from the surrounding area;
- The application should be returned to its previous agricultural use;
- The application will generate additional unacceptable traffic;
- The application will generate noise and disturbance to other residents;
- The site has been developed without planning permission in contrary to thr planning regulations and therefore planning permission should not be granted;
- The personal circumstances of the family are not a reason for approving the permission;
- There will be a risk of pollution to the nearby ponds;
- The ecology assessment and the heritage assessment submitted are out of date and contain insufficient information;
- The family do not require an amenity block so why is this included within and application;
- The proposal is for 2no. caravans; a static caravan and a touring caravan



which suggests two families will live on site;

- The applicant is not paying council tax for the existing living accommodation he has been living in for 2 years;
- Additional buildings installed on the site already; not shown on the proposed plans;
- The proposal will be out of character with the surroundings;

4.2.3 In addition, the Local member has made comments on the application which are provided below for clarity;

*Having opposed a previous application on this site which was refused I am just as opposed to this application since it proposes a development in the "Open Countryside". and to allow it would create a precedent across Shropshire for future applications. There is no change to the basic criteria in that this is development in the open countryside which is contrary to Shropshire's Development Plan. In the application there is considerable stress laid upon the personal circumstances of the applicant but "personal circumstances" are not recognised in the planning process and have not, to my knowledge, been allowed to sway other applications. Planning and its detailed Development Control are about land use and this application should be considered solely on its merits, or lack of them, in land use terms. Despite the view of the applicant's agent, this site is in fact in a prominent elevated position and is certainly not contiguous with the built-up area or the development boundary of Welshampton.*

*It is suggested that Shropshire's GTAA 2017 is not up-to-date but no reason for this statement is given and my understanding is that it is still in full force. It is also suggested that the Site Allocations Development Plan is incomplete. This is incorrect as it is still in force while it is being revised and the application site has never been submitted for consideration for inclusion when the revised SAM Dev becomes part of the future approved Core Strategy. On page 14 of the applicant's Design and Access Statement it is conceded that the proposal constitutes inappropriate development for the purposes of the Development Plan but then seeks to over-ride this by pleading what are headed "Very Special Circumstances". It is a matter of opinion whether the circumstances outlined are special in any relevant way.*

*There is much else that the applicant's agent seeks to use to shore up the application such as two pages of "The Need and Status of the Applicants". As the County Councillor for Welshampton it is my view that the application should be considered, as are all other applications, on whether or not the land use complies with the existing Shropshire Development Plan which is in force until 2026 or until superseded. To allow the application for any other reason would be to create a precedent which could be used to try to justify similar applications in adjacent, or other locations, in the county.*

## 5.0 THE MAIN ISSUES

- 5.1
  - Policy and principle of development
  - Gypsy and traveller status
  - Impact on character and appearance
  - Heritage impact
  - Ecological impact
  - Other matters
  - Planning balance

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of development**

- 6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point for decision taking is therefore the development plan. Proposals that accord with an up-to-date plan should be approved, whilst proposals that conflict with the plan should be refused, unless other material considerations indicate otherwise (para 12 of the National Planning Policy Framework (NPPF) refers).
- 6.1.2 CS5 strictly controls development in accordance with national policies protecting the countryside. The policy lists housing exceptions that may be permitted on appropriate sites in countryside locations, to include those that meet a local need in accordance with national policies and policy CS12. Policy CS12 (Gypsy and Traveller Provision) recognises the need to meet the housing needs of the gypsy and traveller population and sets out how this will be achieved. Reference is made to supporting suitable development proposals for sites close to market towns and key centres and ensuring all sites are reasonably accessible to services and facilities. Reference is also made for the need to demonstrate a strong local connection for small exception sites (under 5 pitches).
- 6.1.3 The SPD Type and Affordability of Housing (2012) goes on to advise that the need for Gypsy and Traveller sites in Shropshire is identified in the Gypsy and Traveller Accommodation Assessment and that, in assessing a planning application, the Council will consider whether the applicant is a bona fide Gypsy or Traveller and the availability of alternative suitable sites.
- 6.1.4 Gypsy and Traveller Accommodation Assessment identifies the needs of Gypsies and Travellers from across the County, the aim of which is to provide a robust evidence base to plan for future provision and to inform the consideration of planning applications.
- 6.1.5 National policy relation to planning provision for gypsy and traveller development is set out in Planning Policy for Traveller Sites (PPTS) August 2015 which is intended to be read in conjunction with the NPPF.
- 6.1.6 The PPTS also aims to promote more private traveller site provision and to increase the number of traveller sites in appropriate locations to address under provision. This must be balanced against the need to protect local amenity and

the environment and the objective of contributing to the achievement of sustainable development consistent with the NPPF.

- 6.1.7 The PPTS specifically states that local planning authorities should consider applications from all travellers (not just those with local connections) and that adopted local policy and existing local provision should be taken into account. Following the refusal of the previous application at the site, an updated position of the applicants personal circumstances have been provided to Officers. Whilst the applicant cannot demonstrate a strong local connection in relation to existing family and connections within Welshampton, they do have family connections in Wrexham, Wolverhampton and Shropshire. That being said 2no. children now attend the local school and the youngest child at the site continues to attend regular medical appointments with both the local health trust and specialist appointments within the wider West Midlands area. Officers do not consider that a strong local connection has been demonstrated, although it recognises the PPTS specifically states that local planning authorities should consider applications from all travellers, the applicants have now established a local connection. The Council do not dispute the applicants gypsy status (discussed further below) but the connections demonstrated are not sufficient to meet the local connections requirement of policy CS12 and a conflict with this policy is therefore established.
- 6.1.8 The reasons cited for originally moving to the site (prior to the refusal of the first planning permission 20/01316/FUL), prior to obtaining planning permission, was the outbreak of the Coronavirus and concerns for the applicant's families health when staying on pitches with family and friends whilst travelling to find work. The applicant has also explained that this is the reason they have continued to live on the pitch without the appropriate planning permission in place in the intervening time. The applicant maintains that there are no alternative sites which would meet his and his family's needs available.
- 6.1.9 Core Strategy Policy CS12 states that an application to meet the accommodation needs of the gypsy and traveller community will be supported if it is a suitable proposal located close to Shrewsbury, the Market Towns, key centres and community hubs and clusters. Such a site may be in countryside. However, the PPTS (paragraph 25) sets out a requirement that '*Local Planning Authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan*'.
- 6.1.10 There is however no specific requirement in the PPTS that gypsy sites should be close to facilities. Although, paragraph 13 does require that policies ensure that sites are economically, socially and environmentally sustainable, avoid undue pressure on local infrastructure and ensure that access to health services and attendance at school is facilitated. It is a local policy requirement (bullet point 5, CS12) that sites are '*reasonably accessible to services and facilities and suitably accessed, designed and screened*'.
- 6.1.11 The application site is situated in open countryside, as defined by Policy CS5,

and outside any recognised settlement. The nearest settlement; the village of Welshampton approximately 400m to the south, has a defined development boundary. The application site is neither within nor adjacent to the boundary and is clearly divorced from Welshampton and the existing development lying within the village. Welshampton is recognised as a Community Cluster within S8.2 (vi) of the SAMDev where development by infilling, small groups of up to 5 houses and conversions may be acceptable on suitable sites within the development boundaries identified on the Policies Map.

- 6.1.12 The site is clearly separate from Welshampton in spatial terms, not adjoining any development or the boundary of the settlement identified in policies. As such it constitutes sporadic development. Whilst there are other examples of development within the countryside surrounding the site detached dwellings, agricultural buildings etc. it is still considered that the application site constitutes isolated development in the open countryside. Resultantly the application site, which is situated in open countryside on a site divorced from nearby settlements and existing development, is considered to represent isolated development, thereby resulting in a conflict with both Policy CS5, together with CS12 and the SPD.

## **6.2 Gypsy and Traveller Status**

- 6.2.1 Information with regards to the gypsy status of the applicant, in accordance with the definition provided within annex 1 of Planning Policy for Traveller Sites, has been provided within the submitted Design and Access Statement, as well as within emails to the Planning Officer. The Gypsy Liaison Officer confirmed as part of the previous application that the information pertaining to the applicants status is accurate and that they would meet the defined criteria, given the applicants circumstances in relation to their working practices has not altered, it is considered they still continue to meet the definition.

- 6.2.2 Should the application be approved it would be appropriate to impose a condition restricting the sites occupation no persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites.

- 6.2.3 Officers recognise that the applicants have provided additional information pertaining to the medical needs of the family on site within confidential emails to the Planning Officer. Having considered the information provided and the connections the family have established within the local schools and health service, whilst Officer do not consider '*very special circumstances*', which outweigh the harm by reason of inappropriateness, have been established, weight is given to the circumstances put forward in conducting the planning balance.

## **6.3 Impact on the character and appearance of the area**

- 6.3.1 The application site is situated in open countryside where there are long distance views toward the site from surrounding public viewpoints. The nearest viewpoint is the public right of way to the east which runs along the boundary of the applicant's ownership. This boundary is currently formed of field hedge interspersed with mature trees, however the site will clearly be visible to receptors utilising this footpath

- 6.3.2 Additionally, there are public viewpoints from the surrounding highways network to the east and south east. The site when viewed from the highway and surrounding area appears detached from neighbouring residential development and does not reflect the character of the surrounding area.
- 6.3.3 The proposal will result in the introduction of a single unit static caravan (currently sited to the south of the site but proposed to the east boundary, an amenity block and a single touring caravan. Each of these aspects of the development will have a resultant visual impact, particularly the caravan where it is recognised in policy MD11 '*Static caravans, chalets and log cabins are recognised as having a greater impact on the countryside*' irrespective of their use. The surrounding context of the site is predominantly open arable agricultural land with native species tree and hedge planting forming field boundaries. The nearest development are detached properties with associated outbuilding and agricultural development. The presence of development will lessen the impact of the proposal but by its nature the scheme will on balance have a detrimental visual impact.
- 6.3.4 The public viewpoints around the site would not result in an all encompassing view, rather there will be certain vantage points where the static caravan in particular is more prominent and others where a limited amount of the development is visible. The nearest public viewpoint (approx. 100m) is a public footpath to the northeast/east of the site along a private access track, from this perspective the land slopes up towards the application site. The hedging bounding the public footpath is mature and established providing a degree of screening. The nearest public viewpoint from the highways network is from Copes lane (approx. 195m) to the east, similarly the hedging forming the highways boundary, together with the boundary to the private access track provides a degree of screening and reduces the site's prominence.
- 6.3.5 Certain aspects of the development could feasibly be designed to reduce their visual impact. For example, the materials of the amenity block can be chosen to reflect the nearby dwellings thereby according with the existing character, the boundary treatments can utilise post and rail timber fencing and further native species planting complying with the rural characteristics of this countryside location. However, the key element of the proposal - the static caravan, hardstanding area and touring caravan, parking and associated paraphernalia - whilst they could be mitigated against with suitable landscaping, given the temporary two year period proposed, this would not have sufficient time to mature to become effective. This though is not considered sufficient to outweigh the harm identified considering the applicant's personal circumstances. The proposal is therefore considered contrary to Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and paragraphs 130 of the NPPF. This is considered further in the planning balance section below.

## **6.4 Heritage impact**

- 6.4.1 As discussed within the Conservation Officers comments the proposal is sited in close proximity to Hampton House Farmhouse, a Grade II listed building with a range of curtilage listed farm buildings to its rear.

6.4.2 Policy MD13 of the adopted SAMDev at criterion 2 requires as follows;

*‘that proposals which are likely to affect the significance of a designated or non-designated heritage asset, including its setting, are accompanied by a Heritage Assessment, including a qualitative visual assessment where appropriate.’*

6.4.3 A proportional Heritage Impact Assessment (HIA) has been submitted to accompany the application. The SC Conservation Officer has commented with concerns noted over the proposal and the siting of the structures (static caravan and amenity block) together with the materials to be utilised.

6.4.4 The proposed application site is approximately 75m to the northeast of the Listed Building, and 120m east of the non-designated heritage asset identified. Mature trees and hedging form the sites outer boundaries between the properties such that the development is partially screened from both the identified heritage assets. The upper parts of both buildings are visible from the application site, from the surrounding landscape, at certain vantage points, the application site can be seen in context with the 2no. identified heritage assets.

6.4.5 The NPPF at paragraph 202 acknowledges that *‘Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use’*. In this instance, both the HIA submitted by the applicant and the SC Conservation Officer conclude that less than substantial harm will arise to the identified heritage asset, a Listed Building, where the public benefit is the provision of a single gypsy pitch to meet the identified need of the applicant and his family, where the personal circumstances provided constitute a material consideration in favour of approval.

6.4.6 Overall, following submission of the HIA, the SC Conservation consultee has confirmed that the impact upon the setting of the nearby Listed Building would be less than substantial. It is considered that the requirements of Section 66 (1) of the PLB&CA Act 1990, in this instance have been met. As such the previous refusal reason (no.4) relating to this issue has on balance been satisfactorily addressed. The other concerns identified by the Conservation Officer can be addressed by the imposition of suitable conditions (landscaping retention materials, proposed plans etc.). It is considered that there are material considerations that weight in favour of supporting the application.

## **6.5 Ecological impact**

6.5.1 Shropshire Core Strategy Policy CS17: Environmental Networks is concerned with design in relation to its environment, but places the context of the site at the forefront of consideration i.e. that any development should protect and enhance the diversity, high quality and local character of Shropshire’s natural, built and historic environment and does not adversely affect the visual, ecological, geological, heritage or recreational values and function of these assets.

6.5.2 The SC Ecology consultee commented on the previously refused application 20/01361/FUL that subject to re-siting of the amenity block and imposition of a 10m buffer zone, free of built development, the scheme would be acceptable

from an ecology perspective. This alteration has now been made as part of the current application with both the amenity block and static caravan sited outside the 10m buffer zone requested. Accompanying this previous application was an identical ecology report to that submitted with the current application.

- 6.5.3 Therefore, the proposal, as submitted, is compliant with CS17 or MD12 (Natural Environment) subject to the imposition of appropriate conditions pertaining to landscaping. The landscaping enhancement would also result in potentially some ecological benefit. As such the reason for refusal (No.3) previously imposed is no longer applicable.

## **6.6 Other matters**

- 6.6.1 The highways access in terms of safety and visibility, together with the parking and turning layout within the pitch boundary are acceptable subject to the imposition of conditions. In addition, the use of septic tank (which although existing is unlawful and would not constitute permitted development in connection with the use of the land for agriculture) is acceptable in principle.

- 6.6.2 Officers recognise that local residents have raised a number of further concerns with regards to the impact of the proposal on residential amenity. Given the isolated siting of the development away from the village of Welshampton, it is not considered that the proposal will have an impact on residents here. With regards to the nearest neighbouring dwellings, sufficient distance is maintained that subject to the imposition of conditions on lighting and no business use of the site it is unlikely any significant impact would arise.

- 6.6.3 A further point raised within the comments made by local residents relates to the need for a static caravan and a touring caravan and an amenity block. For a single gypsy pitch such as this the static caravan forms the main living accommodation whilst the amenity block provides facilities for cooking and washing which minimises the risks (fire and safety) associated with undertaking these activities. The touring caravan is required in order to enable the family or some members of the family to travel to find work as well as to travel for the purposes of fairs and shows which is a recognised part of gypsy and traveller culture. Without the provision of a touring caravan, travelling to find work would be significantly limited and therefore the applicant could not meet the definition of a gypsy and traveller for planning purposes. The provision of a touring caravan and static caravan does not enable 2no. families to occupy the site and conditions would control this.

## **6.7 Planning Balance**

- 6.7.1 The Design and Access Statement accompanying the application maintains that the previous reasons for refusal have been addressed as part of the submission and therefore full planning permission on a permanent basis should be granted. It is the applicants' position that the materials considerations in favour of approval, including the applicants personal circumstances, taken cumulative constitute sufficient weight in favour of approving the application. For clarity, the Council has addressed each of the point previously raised (as part of application 20/01361/FUL) which have been expanded upon as part of this current application.

6.7.2 The need for further sites for Gypsies and Travellers nationally, regionally, locally and personally.

The Council has an up-to-date provision of Gypsy and Traveller pitches within the authority's area and pitches available for the applicant to apply for. The Gypsy and Traveller Liaison Officer has confirmed that there are 2no. pitches available at the Park Hall site, however following the previous occupants leaving these have been vandalised with works to repair them not yet undertaken, although funding is available should someone apply to occupy one of these pitches.

The unavailability of suitable alternative sites;

The Council has available Gypsy and Traveller pitches within the authority's area, a short distance from the application site which the applicant can apply for given their recognised Gypsy and Traveller status (as above).

The family's personal circumstances (including their status as Gypsies and Travellers) in particular their health and schooling;

Officers note the applicants personal circumstances but do not consider that they constitute sufficient weight in favour of the application to overcome the harms identified. The needs for access to medical and schooling facilities could feasibly be obtained from the available Council owned pitches or another site within the locality which does not conflict with the development plan to such an extent.

Deficiencies with Development Plan policy provision for Gypsy and Traveller caravan sites in Shropshire;

The Council consider they have sufficient pitch provision within the authority area, as demonstrated within the Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2019 Update (Published February 2020).

Human Rights consideration;

The applicant's Human Rights have been considered in determining this application.

The call by the LPA for additional sites 2018/2019 in accordance with the Local Plan

Reviews;

The Council are currently undertaking a Local Plan Review with the plan submitted to the Secretary of State for examination in early September 2021. It is therefore anticipated that the plan will be ready for adoption in late 2023 therefore providing an up-to-date policy position. An Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2019 Update (Published February 2020) has been conducted as part of the Local Plan review which confirms at paragraph 8.6 the following:

*It is recommended that the review of 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 the review of the Local Plan it should however*



*be 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.*

The lack of any existing need for pitches within Shropshire is evidence by the 2no. vacant pitches at the Council owned Park Hall site which are available for application. The Council therefore do not consider that the Local Plan Review, including the call for sites process constitute a material consideration in favour of the application. On the contrary the most up-to-date evidence demonstrates that need within the authority area is being met and therefore supports refusal of this application which is contrary to policy.

6.7.3 As discussed above the refusal reasons pertaining to heritage and ecology have been addressed as part of the submission for the application and as such conflict with policy CS17, MD13 and CS6 in these regards is reduced, where suitable condition can be imposed upon a decision to control the development and sufficiently limited the remaining harms arising from conflict with these policies.

6.7.4 However, the Council maintain that the proposal constitutes isolated development in the open countryside resulting in a conflict with CS5 of the Core Strategy which has been attributed significant weight. Similarly, although some connections within the community have now been made through unlawfully occupying the application site, it has not been demonstrated that the applicants have a sufficiently strong local connection resulting in conflict with CS12 which is attributed some weight. Finally, the unacceptable visual impact caused by the development which cannot be mitigated against, thereby resulting in conflict with CS6 and MD2, is attributed some weight.

6.7.5 On this basis Officers do not consider that the material considerations put forward are sufficient to address the harms identified and permanent planning permission cannot be recommended for approval.

6.7.6 Officers are required to consider whether the imposition of conditions would make a development otherwise acceptable. The Planning Practice guidance at paragraph Paragraph: 001 Reference ID: 21a-001-20140306 states:

*'When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.'*

6.7.8 In this instance Officers consider that the imposition of a condition limiting the lifetime of the permission to a **two year temporary permission** from the date the permission is granted, is appropriate and would address the concerns identified, whilst acknowledging the weight attributed to the personal circumstances of the occupants and enabling the 2no. pitches at Park Hall to be repaired with the available funding. In addition, the granting of a temporary planning permission will enable the Local Plan Review to be undertaken and adopted, creating a more up-to-date policy context for considering the development. When the permission expires, further conditions will require the land to be returned to its original condition.

- 6.7.9 The imposition of a temporary condition would sufficiently limit the landscape visual harm to a 2no. year period, and limit the lifetime of the development such that the period of conflict with CS5 is limited. The personal circumstances of the applicant do constitute significant weight in favour of the application and whilst not the ‘very special circumstances’ need to warrant approval of a permanent planning permission contrary to adopted policy, they are sufficient to warrant the approval of a two year temporary planning permission.
- 6.7.10 Further condition limiting the permission to the applicant and his family only, limiting the number of caravans on site to 1no. static caravan and 1 no. touring caravan, together with the imposition of landscaping, preventing the site being used for business purposes and securing ecological enhancements are also considered to be appropriate, compliant with the tests set down in the PPG and address the outstanding harms of a temporary planning permission at the site.

## 7.0 CONCLUSION

- 7.1 The application is recommended for approval subject to the imposition of a condition limiting the condition to a **two year temporary period** from the date of approval. The imposition of this condition, together with those additional appropriate conditions discussed above, will suitably limit the harm incurred on account of the sites isolated position conflicting with CS5 where the applicant has not demonstrated a strong local connection conflicting with CS12, and its landscaped visual impact conflicting with CS6 and MD12. The residual harm and historic impacts (considered less than substantial), is outweighed by the weight in favour of approval attributed to the materials considerations in favour of the application; which are the applicants personal circumstances and whilst there is a plot nearby, it is not immediately available owing to the need for extensive refurbishment.

## 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:

NPPF

Core Strategy and Saved Policies:

CS5 - Countryside and Greenbelt

CS12 - Gypsies and Traveller Provision  
 National Planning Policy Framework  
 SPD Type and Affordability of Housing  
 CS17 - Environmental Networks  
 CS6 - Sustainable Design and Development Principles  
 MD2 - Sustainable Design  
 MD11 - Tourism Facilities and Visitor Accommodation  
 MD13 - Historic Environment

RELEVANT PLANNING HISTORY:

20/01361/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the change of use from pony paddock to single pitch gypsy/traveller site including 1No static caravan, 1No touring caravan, amenity block, works to provide gravel drive, installation of septic tank and associated works REFUSE 4th September 2020

21/03044/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the change of use from pony paddock to single pitch gypsy/traveller site including 1No static caravan, 1No touring caravan, amenity block, works to provide gravel drive, installation of septic tank and associated works (part retrospective) PDE

11. Additional Information

View details online:

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Councillor Ed Potter
Local Member  Cllr Brian Williams
Appendices APPENDIX 1 - Conditions

**APPENDIX 1****Conditions****STANDARD CONDITION(S)**

1. The development hereby permitted shall be for a limited period being the period of 2 years from the date of this permission. At the end of this period the site shall be returned to its former condition.  
Reason: The permission is granted owing to the personal circumstances of the applicant.
2. The development shall be carried out strictly in accordance with the approved plans and drawings  
Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

**CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

3. Within three months of the granting of this permission details of the materials to be utilised in the construction of the external walls and roof of the utility and external colour of the mobile units shall be submitted to the Local Planning Authority for approval. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory.

**CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT**

4. The development hereby permitted shall not be brought into use until the areas shown on the Proposed Block Plan Drawing no. 71233R:1001 for parking, loading, unloading and turning of vehicles has been provided properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use.

Reason: To ensure the provision of adequate vehicular facilities, to avoid congestion on adjoining roads and to protect the amenities of the area.

**CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

5. The site shall only be occupied by Mr James Doran and Mrs Barbara Doran and their resident dependants.

Reason: To ensure that the site is only occupied by the Applicant/s and their named dependants

6. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites Department for Communities and Local Government March 2015.

Reason: This permission is only granted in view of the exceptional circumstances of the gypsy community within the Local Planning Authority's area at the date of the permission hereby granted.

7. The development hereby permitted is limited to a single pitch. No more than one static caravans and one touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Act 1968, shall be stationed on the site at any time and no caravans shall be stationed other than in accordance with the approved layout. Any caravans positioned on the site shall also be capable of being lawfully moved on the public highway.

Reason: To safeguard the amenities of the locality.

8. All existing trees and hedgerows within and bordering the site shall be protected, retained and maintained to the satisfaction of the local planning authority for the duration of any development works and the permitted occupation of the site thereafter.

Reasons: To safeguard the visual amenities of the area.

9. Notwithstanding the details shown on the approved plans the access gates provided shall be set a minimum distance of 10 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

10. When the land ceases to be occupied by the persons named in condition 6 above, or the temporary period of permission defined by condition 1 above expires (2 years), the use hereby permitted shall cease and all mobile homes, static and touring caravans, portable structures, materials, fencing, drainage and equipment stored on the land shall be removed from the land within one month of the cessation date.

Reason: Planning permission has only been given for a limited period of time (2 years) because of the personal circumstances of the occupiers and their identified needs and in order

to restore the openness and visual amenity of the countryside.

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