

**Cllr John Raven**

**Cllr Christine J  
Raven**

**20/00243/VAR**

**W, M, P & D Ward, J  
McCarty & J McCarthy**

**PENKRIDGE**

**New Acre Stables Wolverhampton Road Penkridge ST19 5PA.**

**Variation of 15/00001/FUL appeal decision. Conditions 1 (time limit), 4 (personal condition), 9 (number of caravans).**

## **1. SITE DESCRIPTION AND PLANNING HISTORY**

### **1.1 Site Description**

The application site is located to the western side the A449, approximately 100m south of the village boundary of Penkridge and within the West Midlands Green Belt. It is bounded by the main west coast railway line to the west, the former mineral railway line to the north and the A449 to the east. The 0.4ha site comprises 5 pitches (total 6 residential static homes with Pitch 2 being a double pitch, plus 6 touring caravan spaces, plus 6 utility buildings), granted temporary personal planning permission, which expired on 12 April 2020 (see below planning history). The current application was received and validated on 25<sup>th</sup> March 2020. Additional information has been requested of and provided by the applicant's agent.

1.2 A unit has been installed on a concrete pad, parallel with the A449 to the north of the site access (Pitch 2) that does not accord with the site layout approved under conditions attached to the temporary appeal approvals and is not detailed as part of the current application proposals. There are also additional touring caravans and sheds on the site that do not accord with the appeal approved site layout. These matters are under Enforcement investigation.

### **1.3 Planning History**

1990, 5 enforcement notices (A-E) served requiring the removal of hardstanding (notice A), and the use of the land for the stationing of caravans for residential purposes to cease (notice E). Notices B-D related to the individual plots for the stationing of caravans. The Inspector noted in his decision (para 29) that the site 'might accommodate up to 20 or more caravans' 1990, change of use of land to private gypsy site with 11 pitches, refused and appeal dismissed (90/00062)

2011, change of use of land for 9 gypsy and traveller pitches comprising 23 caravans, 2 amenity buildings and associated access improvements, refused. Appeal allowed for 7 pitches for a temporary period to 31st December 2014, personal to the named applicants (09/00809/FUL).

2011, new gateway entrance, approved (11/00885/FUL).

2013, Change of use land (northern portion of the 2011 appeal site) to use as a residential caravan site for an extended gypsy family with 6 caravans, refused (13/00191/FUL). Appeal dismissed.

2013, vary condition 11 of permission 09/00809/FUL to substitute the names of site occupants, refused (13/00139/VAR).

2013, vary condition 11 of permission 09/00809/FUL to substitute the names of site occupants, refused (13/00290/VAR).

2013, use of land for permanent stationing of residential caravans (2 mobile homes and a touring caravan), Plot 2, applicant John McCarthy., refused (13/00347/COU).

2015, Change of use of land to Traveller site for 5 plots (6 pitches) with associated hard standing, access, fencing, utility blocks and cesspools-retrospective, refused (15/00001/FUL). Granted 3 year temporary/personal planning permission (expiring 12.04.2020) at Appeal (Ref. APP/C3430/W/15/3033377).

2015, Change of use of land to use as residential caravan site for one Gypsy family for up to 4 caravans, laying of hardstanding, erection of utility building and formation of new access, refused (15/00008/FUL). Appeal Dismissed.

2015, New gated access, approved, (15/00547/FUL).

2017, Variation of condition 4 of 15/00001/FUL) - to substitute name in personal condition, refused (17/00435/VAR). Appeal allowed on a personal and temporary basis for the duration of the term of the host appeal permission (12.04.2020).

## 1.7 Pre-Application Discussions

### 1.7.1 None.

## **2 AGENTS SUBMISSION:**

Permission was granted at appeal for this site on 12 April 2017 on a temporary basis of 3 years until 12 April 2020 with a personal condition limiting occupation to named individuals.

An application was subsequently made to vary the personal details Condition for one pitch to enable Mr Martin Ward and his daughter Mary to occupy one of the pitches. Following refusal of planning permission this request was allowed at appeal on 29.3.2019 for the variation of Condition No. 4 for the duration of the temporary permission granted in 2017.

The current application is made to vary the time limit and give the Council opportunity to renew consent for all 5 pitches and reconsider whether a temporary permission is still necessary.

In the first instance the Council is asked to make the permission permanent. It is argued below that there is very good reason to grant on a permanent basis given the considerable need for more pitches in the District, and historic failure of policy to address this need. Having regard to the considerable need for more pitches the Council is also asked to consider whether any permission should be restricted to named individuals and whether this is necessary, reasonable or relevant. But if a personal condition is still necessary the Council is asked to vary this to include the following names for families that have changed or whose children are now aged 18 (or will be 18 by the time the application is determined) or older:

Pitch 2: Mrs Winnie Ward, & Mr Patrick Ward and Mr Lawrence Ward (son aged 23) Ms Chanel Ward (daughter aged 11), Charlie Ward (son) and 2 other children.

Pitch 3: Mr Martin Ward, Ms Philomena (Mary) Ward, Mr Martin Ward Jnr and Mrs Bridget Ward

Pitch 4: Mr John McCarty, Mrs Fanta McCarty, Mr John Ward Jnr, Ms Mammy Blue McCarty and 1 child.

Pitch 5: Ms Philomena Ward and 3 children

Pitch 6: Ms Donna Ward and 1 child.

If the Council is not willing to grant permission on a permanent basis, then consideration should be given to a temporary permission but there must be good justification to do so (i.e., some realistic prospect that suitable alternative provision can be found that is not in the same Green Belt).

The Council is also asked to vary condition 9 which limited permission to 12 caravans of which 6 would be static caravans.

Permission is already granted on pitch 2 for 2 static caravans. The occupiers of Pitch 3 are seeking consent for a second touring caravan for Martin and Bridget Ward, and the occupiers of Pitch 4 (another double sized pitch) seek consent for a second mobile home for the applicant's daughter Mammy Blue and her child. In total permission is now sought for 14 caravans of which 7 would be statics.

The site occupants are as follows:

Mrs Winnie Ward and her children Charlie-9, Tom-16, Patrick-17, Chanel- and Lawrence-23.

Martin Ward and Ms Mary (Philomena) Ward aged 24 and son Martin aged 20 with wife Bridget Ward and child Juliette.

John and Fanta McCarty and their 2 children John aged 17/18 and daughter Mammy Blue aged 19 and her daughter Lily aged 1.

Philomena Ward and her three children John-6, Philomena-4 and Tom 1.

Donna Ward and her child Bridget Marie aged 1 ½.

(All ages as at 2020 at the time of the application submission).

The land is still in the name of John McCarthy father of John McCarty on Pitch 4. (the surnames are spelt differently due to an error on the birth certification for J McCarty Jnr).

The families still travel for work and often travel as a group taking Philomena and Donna with them. Donna is the cousin of Winnie Ward and has been on the site for about 12 months having left Ireland for family reasons. The families go mostly to Greater Manchester for groundwork stopping on waste ground and car parks in Rusholme, Fallowfield and Clayton. Last year the McCarty family also spent time in Dundee on a transit site for about 1 month, and 2 months in Sweden and Norway doing groundwork as well as going to Manchester.

Martin Ward and his family also still go to many of the traditional Gypsy fairs for trading (e.g., Stow twice a year, Appleby and a fair in Nottingham).

Philomena Ward pulls away with her brothers who are living on the roadside in the Birmingham/Coventry area. The issues are well known. Permission was first granted on appeal in February 2011 for temporary period until December 2014. The site has now been occupied for 9 years. The only concern is whether harm to the Green Belt and any other harm is outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

The Gypsy Traveller status of the site occupants was accepted in 2017 and 2019 and this has not changed. The families still travel for an economic purpose and/or intend to travel for an economic purpose. They are all homeless with no alternative accommodation available to them. The Council has failed since 2017 to find or offer any of the site occupants suitable alternative accommodation.

Since the 2017 appeal Mr Jamie Jones and Mr Lee have left their pitches to the north and south of this application site. The fence on plot 6 has been removed and the hard standing on the former Jamie Jones plot incorporated into this pitch. But consent is not sought for this enlarged pitch and I have informed my clients that this would require a separate application.

The Council is asked to determine this application as made based on the plans approved in 2017. The 2017 GTAA has identified a considerable need for more pitches (87 pitches 2016-2036) and most sites are privately owned and occupied. As with other districts in the West Midlands there is pressure to address the overflow needs of Birmingham. Land will have to be removed from the Green Belt. The Council does not have a 5-year supply of pitches and the Site Allocation Document 2018 only identified 20 pitches on 12 existing sites. This failed to address the immediate need with no contingency of buffer provision. This site was initially on the list.

The Local Plan review is at an early stage and is unlikely to be adopted until 2023. There has been slippage since the LDS was published April 2019. The needs of Gypsy Travellers will not be consulted on until the Preferred Option stage which was to take place summer 2020 but has already been pushed back. They were not considered as part of the Spatial Housing Strategy consultation even though the needs of Gypsy Travellers not meeting the PPTS definition fall to be considered as part of housing allocations.

Most if not all new Gypsy Traveller pitches are likely to be located in the Green Belt as some 80% of the District is Green Belt and most of the district outside built up areas is Green Belt. It is unlikely many sites will be so well located to a main service village as this site. There are no towns in this district. Penkridge is in the highest settlement tier in the Local Plan. It would be difficult to find a more sustainable location than this. Since the 2017 appeal new housing developments have been completed on the south side of Penkridge with no provision for any Traveller pitches. This location has long been occupied by Travellers. As the 2019 appeal decision notes the decision to refuse consent to vary a personal condition when it had no additional impact on the Green Belt was without justification as the change had a neutral impact on the Green Belt.

The continued failure of policy to find suitable alternative sites within the District weighs heavily in support of this application. Historic failure to deliver sites also weighs heavily in support of this application. Policy E of PPTS states that 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. However, there is nothing in policy to suggest that personal circumstances and unmet need can never constitute very special circumstances. It is a matter of planning balance and judgment. Moreover, case law has shown that other considerations amounting to 'very special circumstances' sufficient to outweigh the harm to the Green Belt can be established. In this case, a series of permissions have been granted in the clear expectation that the Council would allocate sufficient suitable sites within the period of each permission, to enable the appellants to find an alternative home. This has failed to happen on each occasion. Consequently, the site occupants have experienced an extended

period of uncertainty surrounding their home. To be in this situation for this length of time places an unreasonable burden on the applicants as well as requiring applications for renewal on a cyclical basis. Moreover, the government's Planning Practice Guidance (PPG) suggests that a second temporary permission is rarely justifiable. This is both time consuming for the Council and has resulted in the extended uncertainty, as well as on going costs, for the appellants. It would also lead to further uncertainty for all concerned. It would also fail to comply with guidance in PPG.

There is no guarantee that the DPD will have been adopted and implemented by the time a further temporary permission has expired. The Council is therefore asked to consider realistically whether it is reasonable to assume that a more suitable site not in the same Green Belt will be found before dismissing the possibility of granting permission on a permanent basis.

The repeated renewal of temporary permissions also raises issues of human rights considerations, as a requirement to leave land that has been their home for several years would constitute an interference in the site occupants' rights under Article 8. I acknowledge that they have known that the permissions were temporary. However, it is the period of time that has elapsed and failure of the Council to secure suitable alternative provision during this period that suggests this interference should be given some weight, particularly as there has been expectation from previous Inspectors and the Council itself that the situation would be resolved far more speedily than it has been. Although the Framework requires a decision maker to give substantial weight to harm in the Green Belt, the unmet need and the extended period of uncertainty experienced by the applicants amount to other considerations which are material to the planning balance. Moreover, the harm to the Green Belt that would arise from continued occupation of the site has to be balanced against the harm arising from the unauthorised occupation of another site most likely in this same Green Belt if consent is not granted and there is no suitable alternative site available that is suitable, affordable, available and acceptable.

It is argued that there are considerations which together amount to very special circumstances sufficient to clearly outweigh the harm to the Green Belt, and that the applicants should be given permission to continue to occupy the site on a permanent basis. As there seems little realistic expectation that deliverable alternatives will emerge in the short or medium term, this occupation should not be time limited.

In any case, refusal of this application would be to effectively penalise the applicants for the Council's own policy failure. There seems to be a significant shortfall of suitable sites in the area and there is nothing to suggest that the Council will be able to rectify this situation in the foreseeable future.

On this basis, it is argued that conditions 1 and 4 as attached to the 2017 permission as modified by the 2019 permission no longer reasonable nor necessary and that planning permission should be granted for the permanent occupation of the site, subject to alternative conditions.

### **3. APPLICATION DETAILS**

#### 3.1 Proposal

The proposal would add 1 additional static residential caravan on Pitch 4 for the site owners daughter and her child forming a next generation new household, and one additional touring caravan within the boundaries of Plot 3 for the Ward family. Adequate space is available within the boundaries of these generously sized pitches.

Details of the mobile home would be controlled under the terms of the Caravan Sites Acts (max. size approx. 20m x 6.8m x 3m high).

The proposal seeks permanent permission without personal occupation restrictions. Temporary/personal permission should be considered as a fallback position if very special circumstances are not considered to weigh the planning balance in favour of a permanent permission for general gypsy and traveller occupation needs but are considered sufficient to weigh the balance in favour of a temporary consent when taking account of all material considerations.

### **4. POLICY CONTEXT**

#### 4.1 Within the Green Belt

#### 4.2 **Adopted Core Strategy 2012**

Strategic Objectives:

Strategic Objective 1: To protect and maintain the Green Belt and Open Countryside in order to sustain the distinctive character of South Staffordshire.

Strategic Objective 3: To protect and improve South Staffordshire's environmental assets.

Strategic Objective 6: To ensure that all new development is sustainable, enabling people to satisfy their basic needs and enjoy a better quality of life, without compromising the quality of life of future generations.

Strategic Objective 8: To ensure the delivery of decent homes for members of the community including the provision of more affordable housing which matches in type, tenure and size the needs of the residents of South Staffordshire and to meet the needs of an ageing population.

## Core Policies:

Core Policy 1 - The Spatial Strategy for South Staffordshire  
Core Policy 4 - Promoting high quality design.  
Core Policy 6 - Housing Delivery  
Core Policy 11 - Sustainable Transport

## Development Policies:

GB1 - Development in the Green Belt  
EQ1- Protecting, Enhancing and Expanding Natural Assets  
EQ4 - Protecting and Enhancing the Character and Appearance of the Landscape  
EQ9 - Protecting residents' amenity.  
EQ11 -Wider Design Conditions  
EQ12 -Landscaping  
H6 - Gypsies, Travellers and Travelling Showpeople  
EV11- Sustainable Travel  
EV12 -Parking Provision

### **4.3 Adopted Site Allocations Document 2018**

SAD 4 Gypsy and Traveller Pitch Provision.

**4.4 Joint Strategic and Site Allocations Local Plan Review** (including Gypsy & Traveller provision assessment and future allocations).

Issues & Options consultation undertaken between 8<sup>th</sup> October 2018 and 30<sup>th</sup> November 2018.

The needs/issues of the Gypsy and Traveller community will be consulted on at Preferred Options stage, now scheduled for Summer 2021 as a result of unavoidable practicable consultation slippage resulting from Covid 19 restrictions. The Preferred Options stage will include the consideration of new sites for gypsy and traveller pitches. The revised Local Development Scheme programme (June 2020) anticipates Publication of the Preferred Plan for consultation in Summer 2022, Submission to the SoS in Winter 2022, Examination in Spring 2023, and Adoption in Winter 2023.

### **4.5 Other Policy Considerations:**

Planning Policy for Traveller Sites

National Planning Policy Framework

Designing Gypsy and Traveller Sites - A Good Practice Guide Communities and Local Government (historic context)

Gypsy and Traveller Accommodation Assessments (GTAA's)

South Staffordshire Design Guide 2018.



South Staffordshire Green Belt Study 2019.

## **5. CONSULTATION RESPONSES**

### **Councillor comments:**

(No Comments received expired 09.07.2020).

**Local Plans** (Comments received 21.09.2020).

### **Introduction**

The proposal seeks a variation on conditions 1- time limited, 4- personal condition and 9-number of caravans. The application has been made to vary the time limit condition, with their clear preference to make the site permanent; or vary the condition to extend the temporary consent if this is not supported. The proposal also seeks to remove the personal condition setting out the named occupants on the site. The agent states the reason being that conditions 1 and 4 are no longer reasonable or necessary.

Variation for condition 9 seeks permission to increase the limit of caravans to 14 from 12 (including 1 static and 1 touring caravan). The occupiers of Pitch 2 are seeking consent for a second touring caravan. The occupiers of Pitch 3 (double pitch) are seeking consent for a second mobile home. This seeks permission for 14 caravans in total, 7 of those being static.

### **National Policy**

The National Planning Policy Framework (NPPF) and Planning Policy for Traveller's Sites (PPTS) imposes a duty on Local Planning Authorities (LPAs) to provide Gypsy and Traveller pitches and plots to meet evidenced need over a plan period. The above proposal however is within the West Midlands Green Belt.

While the NPPF is based upon a presumption in favour of sustainable development, it is clear from the framework that Green Belt Policy cannot be overridden by this presumption (see *paragraph 11* and *footnote 6*). Likewise, the PPTS Paragraph 16 under Policy E further enhances this stance by stating that;

*"Inappropriate development is harmful to the green belt and should not be approved, except in very special circumstances".*

Paragraph 16 of the PPTS also comments that;

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

## **South Staffordshire Local Plan**

The 2012 adopted Core Strategy contains Policy, *H6: Gypsies, Travellers and Travelling Showpeople* which sets out criteria for the determination of applications for gypsy and traveller sites and pitch requirements up to 2028. The Site Allocations Document (SAD) which was found sound in 2018, delivers the residual pitch requirements from Policy H6, with the allocations to meet these requirements set out in Policy SAD4. This site was put forward and considered as an option in the SAD Site Assessment, however upon evaluation it was decided not to take the site forward as an allocation.

The SAD allocated pitches to ensure that the pitch requirements identified in the Core Strategy were met. New provision for gypsies and travellers has therefore come through the plan led system, namely the SAD. Additional provision will come through the Local Plan Review to enable sites to be located in the most suitable locations where the need is the greatest. Fundamentally, it is Local Plans view that all new provision for Gypsy and Traveller pitches should come through this plan-making process.

A new GTAA was carried out in 2017 with neighbouring Authorities – the Black Country and South Staffordshire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment - to update the needs evidence. This GTTSA 2017, undertaken as part of the 2017 SHMA with the Black Country authorities, identifies a need for 87 additional pitches over the 2016-2036 period; and a need of 48 over the 2016-2021 period. This assessment was prepared on the basis of a completely different methodology compared to the 2014 and 2008 GTAAs; and represents an increase in needs compared to the adopted Core Strategy. The updated needs requirement will be considered in the review of the Local Plan and will be included in the Duty to Co-operate discussions with neighbouring authorities as to how the identified needs can be collectively met. The SAD assists in meeting needs in the short term and the new Local Plan/Duty to Cooperate agreements will focus on meeting needs in the medium to long term.

### **Principle of the development**

The site is in the Green Belt. Planning Policy for Traveller Sites (2015), the NPPF and Core Strategy policy GB1 all note that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The Planning Policy for Traveller Sites clearly states that traveller sites in the Green Belt are inappropriate development.

Following consideration of the proposal against Planning Policy for Travellers Sites (2015), Core Strategy Policy GB1 and the NPPF it is considered that the proposal constitutes inappropriate development in the Green Belt, and therefore 'Very Special Circumstances' are required in order for the application to be acceptable.

## **Very Special Circumstances**

The applicants have submitted a supporting statement setting out the grounds for a positive consideration of this proposal. This states that there is unmet need for Gypsy and Travellers pitches within South Staffordshire, demonstrated by a lack of 5-year supply, the Site Allocation Document (SAD) under identifying sites to meet the 2017 GTAA need and availability of permanent alternative sites.

As noted in paragraph 16 of the Planning Policy for Traveller Sites (PPTS).

*'Traveller sites (temporary or permanent) in the Green Belt are inappropriate development...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'.*

There are children living on the site and so decision making should consider the best interests of the children. However, the application provides very limited information regarding the applicant's personal circumstances, specifically relating to the best interests of the child, and lacks explanation to justify the increase in pitches that that the application requires.

## **Core Strategy Policy H6 considerations**

The case officer will need to consider the proposal against each of the criteria in Policy H6 and be satisfied that each of these have been met, in order for the proposal to be considered in conformity with the policy. As set out above, the proposal will be harmful to the Green Belt and therefore VSC will need to be demonstrated in order to confirm to both Core Strategy Policy GB1 and Policy H6 (criteria 8(a)).

## **Other Material Considerations**

The supporting statement argues that that Penkrige, the village where the site is situated, is in the highest development tier in the Local Plan. This refers to its designation as a Main Service Village in Core Policy 1 of the Core Strategy 2012. The agent argues that it would therefore be difficult to find a more sustainable location.

In the supporting statement, the agent argues that if permission is to be granted on a temporary basis, this creates an extended period of uncertainty for the residents and creates a burden and cost to them. The agent further argues that this would be failure to comply with the Planning Practice Guidance (PPG), which states that a "*second temporary permission is rarely justifiable*". This refers to paragraph 14 of Use of Planning Conditions. Paragraph 14 also states that "*There is no presumption that a temporary grant of planning permission will then be granted permanently*".

## **Conclusion**

The proposal is to vary conditions 1, 4 and 9 of the 15/0001/FUL permission, seeking permission to be granted on a permanent basis, or temporary if this cannot be granted, and incorporates an additional 2 caravans, seeking permission of a total of 14 caravans. It is the view of the Strategic Planning team that the application does not constitute an acceptable form of development in the Green Belt, and therefore Very Special Circumstances (VSC) need to be demonstrated. The applicants have provided some detail of VSC which they believe constitute the positive consideration of this application. The extent to which the VSC proposed clearly outweigh the harm to the Green Belt will need to be considered having regard to paragraph 16 of the PPTS, including the best interests of the child and unmet need. It is the view of the Strategic Planning team that the supporting evidence does not provide enough evidence - particularly around personal circumstances and best interests of the child - to justify VSC, and that the variation of condition 9 is over and above what was previously granted and has not been justified. Therefore, the proposal is unlikely to be acceptable for a permanent consent due its conflict with policies GB1 and H6 of the adopted Core Strategy.

**Arboricultural Officer** - (No Comments received expired 09.07.2020).

**Network Rail** - (No Comments received expired 09.07.2020).

**Crime Prevention Design Advisor** - (No Comments received expired 09.07.2020).

**Severn Trent Water** - (No Comments received expired 09.07.2020).

**E.H.M.** - (Comments received 12.08.2020)

No Comments.

**County Highways** – (Comments received 03.07.2020)

There are no objections on Highway grounds to this proposal on the basis that previously imposed highways conditions remain in place.

**Parish Council** - (Comments received 26.06.2020).

Strongly object to the application. The land is protected Green Belt

SSC Site Allocation document does not specify this piece of land as a new permanent travellers site.

The temporary permission given in the Appeal expired in April 2020 and Council strongly recommends that this not be reinstated.

The Appeal was made and accepted and as such the site should be vacated and a new application made.

**Site Notice** - Posted 23.06.2020 (Consultation period expired 14.07.2020).

## **6. APPRAISAL**

### **Principal of Development.**

6.1 The proposal represents inappropriate development in principle within the Green Belt and the proposed introduction of one additional static caravan and one additional touring caravan within the confines of the appeal consented site would cause some additional loss of openness. The proposals would not cause any additional encroachment.

6.2 Para. 143 of the NPPF states that:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.

Para. 144 of the NPPF continues:

“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 unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.

6.3 The application site is located within the Green Belt. The principle of gypsy and traveller sites is by definition inappropriate development in terms of Green Belt Policy, not falling within an exempted category listed under para’s 145 and 146 of the NPPF, or in Policy GB 1 of the adopted Core Strategy.

6.4 The previous appeal approvals for the 5 pitches subject to the current application acknowledged that the impact on the Green Belt was unacceptable, but that the personal circumstances put forward by the appellants and acknowledged shortfall in supply of pitches across the District and lack of any alternative available sites warranted temporary permissions. These decisions were rationalised on the basis that temporary consent would allow for the preferred method of delivery of pitches through the relative strategic consideration of sites through Development Plan allocations whereby the merits of various sites are considered including Green Belt impact.

6.5 The NPPF is based on a presumption in favour of sustainable development but is clear that Green Belt policy cannot be overridden by this presumption, where 'specific policies in this Framework indicate

development should be restricted' (para 11). Footnote 6 includes 'land designated as Green Belt'.

6.6 The Central Government issued 'Planning Policy for Traveller Sites' 2015 states that 'Traveller sites (temporary or permanent) in the Green Belt are inappropriate development, and 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".

6.7 The inappropriateness of the development in the Green Belt therefore carries significant weight in the balancing exercise required to determine this application.

### **Assessment of proposal against H6 and 5-year supply:**

6.8 Policy H6 of the Core Strategy sets out the gypsy and traveller pitch requirements for South Staffordshire to 2028 and pledges to maintain a 5-year supply of sites.

6.9 A GTAA was carried out in 2017, as part of the evidence gathering for the Local Plan Review. This identified a need for 48 pitches up to 2021. This current application would contribute 1 additional pitch towards meeting this requirement up to 2021, if approved on a permanent basis.

6.10 The revised 2020 GTAA represents the most up-to-date evidence base related to the need for additional pitches. It identifies a need for an additional 103 pitches in the forthcoming 15-year period in South Staffordshire, with a need for 54 additional pitches in the next 5-year period. The new GTAA has yet to be tested by Public Examination.

6.11 The Local Plans team is in the process of preparing the Council's joint (Policy Strategy & Site Allocations) Local Plan Review, which will include the allocation of pitches to meet identified gypsy and traveller pitch requirements.

It is the Local Planning Authority's view that new provision for Gypsy and Traveller pitches should come through the plan led system and this will enable sites to be located in the most suitable locations where the need is greatest, and where the relative Green Belt impacts of sites can be assessed. This strategic approach is crucial due to the acknowledged importance attached to Green Belt Policy and the need to protect the Green Belt against inappropriate development.

6.12 Council cannot currently demonstrate a 5-year supply of traveller sites. However, Planning Policy for Traveller Sites states that:

'If a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt.'

Therefore, as this site is in the Green Belt, the lack of a five-year supply should not carry significant weight in the determination balancing exercise.

6.13 Core Strategy Policy H6 sets out the criteria against which proposals for new/extensions to existing gypsy sites should be assessed. The criteria can be summarised as follows:

1. The applicants must meet the definition of gypsy and travellers;
2. Essential utility services are available to serve the site;
3. Site is designed to protect the amenities of proposed occupiers/amenities of neighbouring properties;
4. Transit sites should have good access to highway network;
5. Sites for Travelling Showpeople should be large enough to accommodate ancillary yards for business use providing there is no adverse impact on residential amenity;
6. The site can be adequately and safely be accessed by vehicles towing caravans, is well related to the established local highway network and adequate space within the site to accommodate vehicle parking, turning space and to accommodate the occupants of the site;
7. The development is of an appropriate scale so as to not put unacceptable strain on infrastructure or dominate the nearest settled communities and avoid problems of community safety arising from poor social cohesion;
8. Should be suitably landscaped to limit impact on landscape character of the area. In areas of nationally, sub-nationally or locally recognised designations planning permission will only be granted where the objectives of designation would not be comprised by the development - examples include:
  - a) in the Green Belt proposals should not be 'demonstrably harmful to openness'
  - b) where proposals that will harm the setting, function, and integrity of Cannock Chase AONB will be resisted
  - c) where proposals that will harm the setting, function, and integrity of any SSSI, SAC will be resisted

d) harm to heritage assets will be resisted.

9. Proposals must not be located in areas at high risk of flooding including functional floodplains (flood zones 3a and 3b).

Proposals that comply with all the above criteria will generally be granted planning permission to meet the existing need in the District.

#### 6.13.1 Gypsy Status:

The first criterion of policy H6 requires that applicants meet the definition of gypsy and travellers or travelling showpeople as set out in Annex 1 of the National Planning Policy for Travellers Sites (PPFTS).

Annex 1 of the PPTS states that 'for the purposes of this planning policy "gypsies and travellers" means:

"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."

The Agent has confirmed that the applicants have gypsy and traveller status under these terms.

#### 6.13.2 Servicing:

Details of foul and surface water disposal arising from the development, could be suitably controlled by condition.

#### 6.13.3 Design and Landscaping:

The site is partially screened along the existing boundaries by mature trees and hedges.

6.13.4 The existing access would be utilised to serve the site. County Highways raise no objections subject to conditions. The proposal would be in accordance with the sixth criterion of policy H6.

#### 6.13.5 Cumulative Impact, domination of settled community and community cohesion:

The application site is located approximately 0.1km to the south of Penkrige village Development Boundary within an area of dispersed development in a predominantly rural location. It is therefore not considered that the proposal would cause an unacceptable strain on infrastructure or dominate the nearest settled community.



#### 6.13.6 Impact on Green Belt:

It is established that the proposed development, by definition, represents inappropriate development in the Green Belt. Harm by inappropriateness of development attracts substantial/significant weight in the assessment.

The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permanence.

The siting of the proposed additional mobile home and touring caravan would consolidate the quantum of development on the site having a degree of increased impact on the openness of the Green Belt. The previous appeal decisions in granting temporary consent emphasised that the impact of inappropriate development on the openness of the Green Belt was detrimental to an unacceptable degree and that the development was unacceptable on a permanent basis within the Green Belt.

At para. 63 of the 2017 appeal decision the Inspector determined that:

“Whilst I have attributed significant weight to the health care needs of one particular child, and the education needs of the children, I do not consider that these matters would amount to the very special circumstances required to justify the development on a permanent basis”,

At Para. 66 she added that:

“in the circumstances where the permission would be time limited, the unacceptability of the scheme by reason of inappropriateness and its effect on openness is moderated by the reasonable expectation that the planning circumstances will change at the end of the period of temporary permission; in this case, the adoption of the SAD. A temporary permission would enable the families to pursue a site through the DPD process”.

Previous permissions on this site were granted at appeal strictly on a temporary basis given the demonstrable shortfall in pitch supply in the District, lack of 5-year supply and with the expectation that the Development Plan would be likely to deliver sites within the timeframe of the temporary consents to offer alternative accommodation.

Whilst the site was not put forward for allocation in the 2018 SAD, the context remains the same with the progression of the current Local Plan Review and the solid prospect of permanent sites coming forward through allocation within a relatively short timeframe. The strategic consideration of the relative Green Belt impact of sites is a crucial factor within South Staffordshire, an area which is predominantly Green Belt designated and the character of the Green Belt landscape of the District is a fundamental distinguishing characteristic of the identity of the area.

#### 6.13.7 Flooding and Drainage:

The application site is not located within a flood plain or in an area which is particularly susceptible to flooding.

#### 6.13.8 Impact on Heritage Asset

There is no impact on Heritage Assets.

#### 6.13.9 Summary of Criteria in H6:

The proposed development would further reduce openness by introducing an additional quantum of development on a previously open site and consolidating sporadic, dispersed development in the locality. The proposal is therefore in conflict with criterion 8 a) of Core Policy H6. The harm caused by loss of openness in this context would be significant and additional to the "substantial weight" attributed to the harm caused by reason of development inappropriateness.

#### 6.14 Other Material Considerations

##### 6.14.1 National Policy for Travellers Sites August 2015

The National Planning Policy for Travellers Sites provides a national strategic framework for assessing gypsy and traveller development. The key points for Local Planning Authorities to consider when determining applications for gypsy and traveller development are:

- Gypsy and traveller development in the Green Belt is "inappropriate development"; subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances
- Development plan (policy H6 in this case) is the starting point for assessing development proposals unless material considerations indicate otherwise;
- Level of need (including general need);
- Alternative sites;
- Personal circumstances;
- Sites should not dominate settled community or put undue pressure on services.

The document makes clear that 'inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. 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.

6.14.2 The applicant's agent confirms that there are additional children living on the site, born since the appeal determinations to named occupants under the conditional approval, and that Chanel and Charlie Ward on pitch 2 both attend Middle School in Penkridge. The children on pitch 5 attend the local primary school in Penkridge.

The decision taken must be cognizant of the best interests of children. The needs of children must be treated as a primary consideration in planning determination. The Local Authority has a responsibility to safeguard and promote the welfare and well-being of children under the Children's Act 2004.

6.14.3 The Agent considers that the harm to the Green Belt and any other harm is outweighed by the identified need, the personal accommodation needs of the applicants family and best interests of the child, absence of alternative sites, the lack of a five-year supply, the failure of the Council to address the identified need through the development plan process, the personal health and education needs of the site residents.

6.14.4 Human Rights:

The National Policy for Traveller Sites makes it clear that Human Rights are a consideration in the determination of gypsy and traveller proposals. When considering this application account has been taken of the applicant's Article 8 rights. It is considered that the recommendation accords with the policies of the adopted Local Plan and the applicant has the right of appeal against this decision conditions.

## **7. CONCLUSION**

7.1 The site falls within the West Midlands Green Belt where there is a strong policy presumption against the inappropriate form of development proposed. The weight of harm caused by inappropriate development in Green Belts is automatically classified as substantial in the planning decision making balance. The proposal would also cause some additional loss of openness, the acknowledged most important characteristic of Green Belts. The Very special circumstances identified by the agent would not be sufficient to overcome the identified harms to the Green Belt on a permanent basis. This position is consistent with the previous temporary planning permissions for this site granted at appeal.

7.2 There is an acknowledged current shortfall in the supply of pitches to meet identified needs/5-year supply within the District, and a lack of apparent available alternative sites. This shortfall is being actively addressed as part of the on-going Local Plan Review, which will allocate sites throughout the District to strategically best meet need where it exists, and consider the relative impact of all sites put forward in Policy terms including relative Green Belt impact assessment.

7.3 The best interests of children, family need for a settled base for education and health, personal circumstances, current lack of 5-year

supply and availability of a permanent alternative site, are recognised as factors weighing in favour of the development.

7.4 Account is taken of the relevant Central Government advice (PPTS - paragraph 16) which provides that;

'Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. 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'.

7.5 On balance it is concluded that the acknowledges shortfall in pitch provision to meet 5-year supply, the lack of alternative available sites to meet the families needs, together with the position/timing of the Development Plan Review to meet needs throughout the District warrants a further temporary consent on a personal basis in relation to the best interests of the children on site in particular that attend Penkridge Middle and Primary schools.

7.6 There is a tangible and realistic prospect of sites becoming available through the on-going Local Plan Review to address identified need for pitches.

7.7 Given the current lack of available sites to meet the needs of the applicant families, a further temporary term would provide a realistic timeframe for the Allocation of sites through the Local Plan Review and subsequent consideration of planning applications. This approach will enable the most appropriate sites, in terms of relative sustainability, Green Belt and Landscape impact and overall compliance with Core Strategy Policy H6 to come forward. This is especially important to a District that is predominantly Green Belt and where the Green Belt landscape is such a crucial defining characteristic of area.

**8. RECOMMENDATION - APPROVE** subject to the following conditions:

1. The use hereby permitted shall be for a limited period being the period from the date of this decision until 12<sup>th</sup> April 2025. At the end of this period, the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.
2. Prior to the siting of the proposed additional static residential caravan and touring caravan details of the proposed revised site layout, structures and installations shall be submitted to and agreed in writing by the Local Planning. The development shall be maintained in accordance with the approved layout/details throughout the life of the

development unless otherwise agreed in writing by the Local Planning Authority.

3. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependents:

John and Fanta McCarty, Winnie, Patrick, Philomena, Martin, Lawrence and Mary Ward, Martin Ward Jnr. & wife Bridget Ward, Mammy Blue McCarty and Donna Ward.

4. When the premises cease to be occupied by those named in condition 3 above, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
5. The site shall not be occupied by any persons other than gypsies and travellers as defined in the National Planning Policy for Traveller Sites.
6. No more than one commercial vehicle per pitch shall be kept on the site for use by the occupiers of the caravans hereby permitted.
7. No vehicle over 3.5 tonnes shall be stationed, parked, or stored on this site.
8. No commercial activities shall take place on the land, including the external storage of vehicles/materials.
9. No more than 14 caravans, of which no more than 7 may be a static caravan/mobile homes, shall be stationed on the site at any time.
10. The development hereby permitted shall not commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

Reasons:

1. The proposal represents inappropriate and harmful development in the Green Belt and the development has been justified for occupation by gypsies and travellers based on the particular very special circumstances of the case which outweigh the automatic harm to the Green Belt in accordance with Policy GB1 of the Core Strategy and the Planning Policy for Traveller Sites solely on a temporary basis.
  2. To safeguard the visual amenity of the area in accordance with policy EQ4, EQ11 and EQ12 of the adopted Core Strategy.
- 3, 4, 5 The proposal represents inappropriate development in the Green Belt and the development has been justified on the basis that its occupation by gypsies and travellers represents very special circumstances to outweigh the automatic harm to the Green Belt in accordance with

Policy GB1 of the Core Strategy and the Planning Policy for Traveller Sites.

6. To restrict the impact of the development on the openness of the Green Belt in accordance with Policy GB1 of the Core Strategy.
7. In the interests of highway safety, in accordance with Policy EV11 of the Core Strategy
8. In the interests of highway safety, in accordance with Policy EV11 of the Core Strategy
9. To restrict the impact of the development on the openness of the Green Belt in accordance with Policy GB1 of the Core Strategy.
10. To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

Proactive Statement:

In dealing with the application, the Local Planning Authority has worked in a positive and proactive manner based on seeking solutions to problems in relation to dealing with the planning application, in accordance with paragraph 38 of the National Planning Policy Framework, 2019.

Paul Turner 9<sup>th</sup> April 2021.