



Appeal Decisions

Hearing held on 12 August 2025

Site visit made on 12 August 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2025

Appeal A Ref: APP/Y2620/C/25/3364244

Appeal B Ref: APP/Y2620/C/25/3364245

Land to the North East of Malthouse Lane, now referred to as Malthouse Corner, Malthouse Lane, Ludham, Norfolk NR29 5AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Tom Harber and Appeal B by Mrs Shannon Lee against an enforcement notice issued by North Norfolk District Council.
 - The notice was issued on 27 March 2025.
 - The breach of planning control as alleged in the notice is without planning permission:
 - 1) The material change of use of the Land from agricultural use to use of the Land for residential purposes facilitated by the stationing and residential occupation of a mobile home and portacabin on the Land.
 - 2) Operational development consisting of the construction of an associated hardstanding and installation of a sealed septic tank.
 - The requirements of the notice are to:
 - i. Permanently cease using the Land for residential purposes.
 - ii. Permanently cease the residential occupation of the mobile home on the Land.
 - iii. Permanently remove the mobile home and portacabin from the Land.
 - iv. Permanently remove the hardstanding, septic tank and the entirety of the post and rail fencing from the Land.
 - v. Permanently remove all resultant debris from the Land, following compliance with point (iii) in Section 5 of this notice.

The period for compliance with requirements (i) to (iv) is 9 months from the date when the notice comes into effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal C Ref: APP/Y2620/W/25/3364399

Malthouse Corner, Malthouse Lane, Ludham, Great Yarmouth NR29 5AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Tom Harber against the decision of North Norfolk District Council.
 - The application Ref is PF/23/0861.
 - The development is change of use of the land to Gypsy and Traveller residential use providing a single residential pitch.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - The deletion of 'iv. Permanently remove the hardstanding, septic tank and the entirety of the post and rail fencing from the Land' from Section 5 and its

substitution with 'iv. Permanently remove the hardstanding and septic tank from the Land'

- The deletion of requirement (v) from Section 5.
 - The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. It is further directed that the enforcement notice is varied by the deletion of 9 months and the substitution of 12 months as the period for compliance.
 3. Subject to the corrections and variation the enforcement notice is upheld.

Appeal C

4. The appeal is dismissed.

Applications for costs

5. The appellant for Appeal C had made an application for costs against the Council, but this was withdrawn before the Hearing.

Appeals A and B – The Notice

6. I have a duty to get the enforcement notice in order.
7. Requirement (iv) of the enforcement notice refers to the requirement to 'permanently remove.... the entirety of the post and rail fencing from the Land'. However, the allegation does not refer to 'post and rail fencing'. If I were to correct the enforcement notice to include reference to the fencing in the allegation this would give rise to injustice as the appellants would not have had the opportunity to argue for its retention as part of an appeal on ground (a). Therefore, I shall correct the enforcement notice to omit the reference to the fence from requirement (iv).
8. There is no compliance period for requirement (v) of the enforcement notice. Also requirement (v) refers to requirement (iii) only and does not address the removal of any debris associated with the removal of the hardstanding and septic tank which is referred to in requirement (iv) (as corrected). Furthermore requirement (v) to some extent duplicates the requirement to remove the mobile home and portacabin from the land which is secured by requirement (iii). These anomalies and duplication can be addressed by the deletion of requirement (v) without resulting in injustice and I shall correct the enforcement notice accordingly.
9. The land shown on the enforcement notice plan shows both the area used for the stationing of caravans and land which is used for grazing. The Council has submitted an amended plan to identify only the land which is the subject of the allegation to avoid any need to consider a mixed use of the site. The appellants have agreed the amended plan and there would be no injustice were I to correct the enforcement notice to refer to the amended plan. Therefore I shall make this correction.

Appeals A and B – Ground (b)

10. The appellants are not disputing that the material change of use and operational development described in the enforcement notice have occurred. But they

consider that in addition to the mobile home and portacabin, a touring caravan has been sited on the land and that this should be included in the allegation.

11. In their Statement of Case the appellants say the touring caravan has been sited on the land and that that has been the case since they occupied the land. The Council argues that the touring caravan was not on the site on the date when the enforcement notice was issued.
12. At the Hearing the appellants explained that the touring caravan was not on the site when the enforcement notice was issued because at that time they were travelling for work. This update explains why the Council did not include the touring caravan in the allegation.
13. Neither party consider that they would be prejudiced if I were to correct the notice to include the touring caravan. However, on the basis of the evidence, the breach of planning control which was occurring when the enforcement notice was issued is described accurately given that the touring caravan was not present.
14. For the reasons set out above the appeals on ground (b) do not succeed.

Appeals A and B – Ground (f)

15. The appeals on ground (f), in this case, are on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. This is because the appellants argue that the post and rail fencing which is referred to in requirement (iv) of the notice is development which is permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
16. The Council is of the opinion that the arguments which are made by the appellants would be more appropriately dealt with on ground (c). Whilst that may be the case, I have corrected the notice to remove the reference to the fencing from requirement (iv), consequently it is no longer necessary for me to consider the appeals made on ground (f) as they relate to the fencing.
17. Similarly if I were to consider the appeals on ground (c), given that I have not corrected the enforcement notice so that the fencing constitutes one of the matters to which the enforcement notice relates, the question of whether the fencing is a breach of planning control is not before me.

Appeal C

Preliminary Matters

18. The proposed site plan as submitted shows a touring caravan as part of the layout of the site. However, the description of development does not refer to a touring caravan. The appellant has requested that I include the touring caravan in my assessment and that if I allow the appeal also grant planning permission for the touring caravan. As it stands this would involve a change in the description of the development.
19. The Council has expressed the view that ‘as the touring caravan would not be lived in but instead is only used when travelling it is not a permanent structure. As such the LPA does not consider this element would be required to be included as part of the description’.

20. A touring caravan is part and parcel of the gypsy and traveller way of life and there is a clear reference to the stationing of a touring caravan in addition to the static caravan on the submitted plans. The description of development on the planning application form refers to a gypsy and traveller pitch which would generally include a touring caravan.
21. The agreed description of development should have included reference to the touring caravan in addition to the mobile home so as to fully and accurately describe the development which was the subject of the planning application and is now the subject of the appeal. No injustice would arise were I to make my determination on the basis of the following description of development:
- Material change of use of land to use as a residential caravan site for 1 no. gypsy/traveller pitch comprising the siting of 1 no. mobile home, 1 no. touring caravan and 1 no. portacabin for ancillary residential use, associated hardstanding and fencing, and installation of a sealed septic tank.
22. The site is located within the Zone of Influence of sites covered by the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) the nearest of which are The Broads SAC/Ramsar and the Broadland Special Protection Area (SPA). The GIRAMS incorporates strategic mitigation measures to be delivered to avoid adverse impacts on Habitats Sites. The appellant has paid the relevant GIRAMS contribution, and the Council is content that this addresses its third reason for refusal. I shall return to this matter later.

Background

23. The development commenced in August 2022, and the planning application is retrospective under Section 73A of the Act. The appellant and his family initially moved a touring caravan onto the site. The appellant has three children, two of which attend a local school and have done so since moving onto the site. The youngest child is under five. Some family members have health needs, and they are registered at the local doctor's surgery.

Main Issues

24. The main issues are the effect of the development on:
- the landscape character of the surrounding area; and
 - the integrity of European sites, with particular reference to nutrient neutrality.

Character and appearance

25. Policy EN 2 of the North Norfolk Local Development Framework Core Strategy (Incorporating Development Control Policies) (the Core Strategy) requires that development is informed by and be sympathetic to the distinctive character areas identified in the North Norfolk Landscape Character Assessment (the>NNLCA). The site falls within the Settled Farmland category of the>NNLCA, and the relevant section includes a summary of the Settled Landscape type and sets out nine key characteristics.
26. The site occupies a prominent location at the junction of Malthouse Lane and Long Lane. I established at the Hearing that although the site shares a boundary with a very extensive arable field it has been separated from it for a considerable length

of time. Before caravans were brought onto the site, it was overgrown, and the appellant and his partner had to remove brambles and nettles to provide access onto it.

27. Key Characteristic 2 as set out in the>NNLCA refers to a rural landscape in which arable land use predominates and records field sizes as large or very large with set aside and grassed margins not being prevalent features. Key Characteristic 3 recognises the contribution of the open landscape with large fields bounded by ditches, grassed banks and low hedges. These descriptions can be applied to the area immediately surrounding the site.
28. The wider area is characterised by isolated farmsteads which are recognised in Key Characteristic 6 and modern agricultural and industrial buildings which are described in Key Characteristic 9 as prominent in certain areas including around Catfield and the former Ludham airfield both of which are in the vicinity of the site. The isolated farmsteads in particular are commonly screened by trees and planting such that the buildings themselves are barely visible, but the screening is prominent given the flat terrain which allows expansive views.
29. The closest industrial buildings are those on the Flogas site which is separated from the appeal site by Malthouse Lane and a comparatively small field. This site is heavily screened towards Long Lane by a bund topped with mature trees but from Malthouse Lane industrial buildings and large gas storage tanks are visible. Whilst these are alien features in the otherwise rural landscape, they form part of its character and that is recognised in the>NNCLA.
30. The clearance of vegetation and the bringing on of the mobile home, the touring caravan and the portacabin, the hardstanding which facilitates the parking of vehicles, and the fencing has resulted in a change to the appearance of the site. If the proposed landscaping were to be carried out there would be further change and the site would make a different contribution to the landscape character of the area than it did when it was undeveloped.
31. The proposed layout of the site locates the mobile home set back and parallel to Malthouse Lane and the portacabin perpendicular to it. The touring caravan and parking and turning areas would be further from the road. This arrangement is similar to what is currently on site, save for the touring caravan which is not present.
32. The portacabin in particular is a prominent feature in the view along Malthouse Lane towards Long Lane and the mobile home is evident in the view in the opposite direction from the junction. The appellant has carried out some planting along Malthouse Lane and the field boundary to provide privacy but due to the lack of maturity this planting has a limited screening effect.
33. Around the wider plot which is in the ownership and control of the appellant there are some established hedgerows and trees including a mature oak tree within the appeal site boundary. At the height of summer when I carried out my site visit this planting provides moderate screening along parts of the site boundary.
34. The landscape proposals for the site include a number of components. A low earth bund is proposed along part of the field boundary which will be planted with a native hedge. The established hedgerows and trees are to be retained, and new native hedges and trees planted to provide a continuous hedge and tree belt

around the wider plot. Groups of new trees are proposed within the wider plot close to the junction and further along Long Road.

35. The landscape elements which are proposed are compatible with the descriptions of field boundaries in Key Characteristic 3 of the>NNLCA. Furthermore the retention of oak trees and their incorporation into roadside planting is compatible with Key Characteristic 5 which refers to mature oaks within roadside banks as prominent features in the landscape.
36. The proposed landscaping would help the development to be assimilated into the landscape. However, this effect would not be fully realised until the trees and plants had reached a degree of maturity such that they successfully screen the portacabin and the mobile home and the proposed privacy screen fence from views along Malthouse Lane and from the junction.
37. Whilst the position of the site at the road junction results in it having a prominent aspect this also assists in the assimilation of it into the wider landscape. It does not read as part of the adjacent arable field, by contrast it has its own character. The character of the site before the development was carried out is comparable with an area of set aside. It is accepted in Key Characteristic 2 of the>NNLCA that areas of set aside are not prevalent in the Settled Farmland character area, but that does not mean that such areas are absent. Similarly in its developed condition, whilst not an isolated farmstead as such, the character of the site would not be dissimilar to this kind of sporadic development which is acknowledged by Key Characteristic 6.
38. As a result of the landscape proposals, the site could be assimilated to some degree into the landscape once the proposed planting reaches maturity. I have also found that some of the aspects of the development are consistent with some of the detailed key characteristics of the Settled Farmland Type identified in the>NNLCA. Nevertheless, even when the landscaping has fully matured, the development would be apparent on Malthouse Lane and would be an anomaly in the flat arable landscape typical of this character type and this would amount to moderate harm to landscape character.
39. The appellant has submitted a copy of appeal decisions for Oaksvview Park, Murcott Road, Arncott (Appeal Ref. APP/J0405/W/18/3193773) and Land off Chapel Lane, Little Hadham (Appeal Ref. APP/J1915/W/19/3234671) In both cases the Inspectors accept that gypsy and traveller sites can locate in rural areas. In the Oaksvview Park case, following a detailed assessment of the effect of the development on the character and appearance of the area, the Inspector in that case reached the view that moderate harm would arise. I have followed a similar approach and reached the same conclusion in this case.
40. For the reasons set out above the development is harmful to the landscape character of the surrounding area and is, therefore, contrary to Policy EN 2 of the Core Strategy.

European sites - Nutrient neutrality

41. In March 2022 Natural England (NE) provided advice and guidance to local planning authorities in respect of development proposals that have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitats sites cannot be ruled out.

42. The use of the site generates waste water and permission is sought to retain the cess tank which was installed on the site shortly after the appellant moved onto it in September 2022.
43. The appellant says that a water supply was not installed at the site until 1 March 2025. On that basis he says that a lower than normal amount of waste water was produced between September 2022 and March 2025. The cess tank is connected to kitchen and bathroom facilities in the portacabin and bathrooms in the mobile home. A normal amount of waste is now produced at the site.
44. The development involves overnight accommodation and waste water is a source of water pollution. The site is in the hydrological catchment of the River Thurne and the Upper Thurne Broads and Marshes SSSI which forms part of The Broads Special Area of Conservation (SAC)/Ramsar, an area which contains important habitats for birds and other species. The Broads SAC/Ramsar has been identified by NE as being in an unfavourable condition due to excessive nutrients in the form of nitrogen and phosphorus. Therefore, there is a clear pathway/hydrological connectivity for the development to impact water quality within the habitats site and a likely significant effect either on its own or in combination with other development identified in the NE advice cannot be ruled out. As such, it is necessary for me, as the competent authority, to conduct an Appropriate Assessment (AA) in relation to the effect of granting permission on the integrity of The Broads SAC/Ramsar.
45. The appellant argues that the cess tank is currently emptied by a business which removes and processes the waste outside the nutrient neutrality zone. Consequently he says that for a temporary period it can be concluded that there is no reasonable doubt about the adverse effects on the protected sites and the development will be nutrient neutral.
46. For the reasons set out above, the cess tank has only been emptied once. The appellant has provided a copy of an invoice from the company which carried out the work in June 2025 and a photograph which shows one of its vehicles on site. During my site visit I was able to see the mechanism by which the appellant can see how full the tank is so that he can schedule a collection of the waste as necessary. The appellant also says that the cess tank that has been installed has a 10 year warranty.
47. The appellant has suggested that a planning condition could be imposed to require that the cess tank is emptied on a regular basis every three months. The condition would require that the contractor who has already emptied the tank would continue to do so or that another is agreed in writing with the Council. A requirement for records to be maintained and made available to the Council and a commitment to install an alarm to prevent overflows is also included in the condition as suggested.
48. I am confident that the appellant would wish to ensure that the cess tank is regularly emptied and that in doing so there are no spillages. However, the latter cannot be entirely ruled out and there is no information before me to show how such risks could be removed. Furthermore, notwithstanding the warranty, there is no certainty that the cess tank will not leak into the ground and there is no means by which this can be monitored. Similarly, the pipework which links the facilities in the caravan or portacabin which are exposed at ground level could be damaged or leak. Also in the event that the company is unable to service the site, whilst

reference was made to other contractors there is no evidence before me to substantiate this.

49. The commitment to regularly empty the cess tank and the installation of an alarm would reduce the likelihood of the cess tank overflowing. However, there is an inherent risk in adopting a regular regime of emptying as this increases the risk of spillages during that process.
50. The Council points out that there are no similar arrangements operating on any site in its area. The appellant refers to similar examples in Somerset but there is limited information to demonstrate how the mitigation measures work on those sites or how they were secured by planning condition.
51. The appellant has contacted NE regarding the use of sealed septic tanks and the removal of waste to outside the catchment area. This was not a request under NE's Discretionary Advice Service and the information provided does not appear to have been based on any specific mitigation measures for the appeal site.
52. NE observed that it is important that any mitigation measures can be relied upon to avoid adverse impacts for the lifetime of the development. It also highlights the importance of ensuring proposed mitigation measures are effective, reliable, timely and can be enforced. For the reasons set out above I cannot be satisfied that the use of the cess tank combined with regular emptying to a suitable off site location would be effective or reliable.
53. It would not be reasonable for the Council to supervise the emptying of the cess tank. While records could be kept of these activities and made available to the Council, this would not reduce the risk of an incident occurring on the site.
54. With regard to the suggestion of a time limited consent. The appellant requests that this be for a period of three years. This would reduce the likelihood of a pollution incident given the limited number of times the cess tank would need to be emptied and the likely high structural integrity of the cess tank during its warranty period. However, on the basis of the limited information before me, the adverse effects on the integrity of The Broads SAC/Ramsar cannot be ruled out even on the basis of a time limited consent.
55. The appellant has submitted a Shadow Strategic Appropriate Assessment by Norfolk Environmental Credits (NEC). This concludes that for individual development so long as the quantum of environmental credits purchased from NEC is sufficient to mitigate the nutrients generated by the development then it is possible to ascertain that the proposed development will have no adverse effect on the SAC either alone or in combination with other development. The appellant made some progress on pursuing this route but was unable to secure any credits in advance of the Hearing. Consequently, this is not an alternative which is before me.
56. The appellant considers that with time he could secure the necessary environmental credits and also further explore the provision of a package treatment plant on the site. However, as I have found that even on a temporary basis, the adverse effects on the integrity of The Broads SAC/Ramsar cannot be ruled out it is not necessary for me to go on to consider if a three year timescale would be sufficient to allow the appellant to address the harm in those ways.

57. The appellant has referred to a recent appeal decision for Land at the Loke, Costessey (Appeal Ref. APP/L2630/W/24/3353472) which was allowed. In that case the appellant was able to purchase the necessary environmental credits. Therefore, the Inspector was able to conclude on the AA and overall that subject to mitigation the proposed development would not have a harmful impact on the integrity of the protected sites in that case.
58. In this case the appellant has been unable to secure environmental credits to mitigate the impact of the development. The risks associated with the removal of waste beyond the hydrological catchment areas mean that even on a time limited basis there is a significant element of doubt around the impacts on the integrity of the Habitat Site. Therefore, it has not been demonstrated beyond all reasonable scientific doubt that adverse impacts on The Broads SAC/Ramsar can be ruled out.
59. The development could give rise to an adverse impact on the habitats and species within The Broads SAC/Ramsar, and it has not been shown that mitigation measures are capable of reducing the impact to a de minimis level, through changes to the development. The adverse effect could be avoided by relocating the development outside the hydrological catchment area but this does not appear to be an option which is available to the appellant.
60. When an adverse effect cannot be mitigated and no alternative solutions can be identified then the project can only proceed if there are Imperative Reasons for Overriding Public Interest. In this case, notwithstanding the importance of the development to the appellant and his family, there are no compelling arguments that the development is of vital importance to the national interest or wider society.
61. There is an alternative solution which could avoid an adverse effect on integrity entirely in the form of environmental credits which would amount to a compensatory measure but those are not before me.
62. The use of the land as a gypsy/traveller pitch has the potential to harm the integrity of European sites, with particular reference to nutrient neutrality. Therefore, the development is contrary to Policy SS 4 of the Core Strategy which requires that all development proposals ensure protection of natural assets and Policy EN 9 of the Core Strategy directs that development which would cause a direct or indirect adverse effect to nationally designated sites including SSSIs and The Broads should not be permitted.

Other Considerations

Intentional Unauthorised Development

63. It is government planning policy that intentional unauthorised development (IUD) is a material consideration that should be weighed in the determination of planning applications and appeals.
64. The appellant and his family moved a touring caravan and two cars onto the site over the Bank Holiday weekend in August 2022 in advance of seeking planning permission. His original agent submitted a planning application approximately 3 weeks later. There is no dispute that IUD has occurred.
65. At the Hearing the appellant explained that he had no choice as he and his family were living on the roadside having been evicted from a site in Kent. The appellant

was aware of the need for planning permission before he bought the site and there was a time lag between his purchase and when he was able to access the site. Given that young children were involved the sense of urgency is understandable, but there is limited evidence about why the appellant did not seek planning permission in advance of moving onto the site.

66. Bringing all of these points together I find that the change of use of the land constitutes intentional unauthorised development, and this attracts moderate weight against the appeal.

Need and Supply of Gypsy and Traveller Sites and Policy HO 4 of the Core Strategy

67. The North Norfolk Gypsy and Travelling Showpeople Accommodation Assessment identifies a need for 11 pitches over the full period 2024 to 2040. The Council suggests that this need derives from extensions to existing sites as historically the District has a low level of need. Nevertheless, allowing the appeal would contribute to meeting an identified need and this weighs significantly in its favour.
68. The Council has not allocated sites for Gypsy and Traveller pitches and relies on Policy HO 4 which sets out criteria against which any applications which do come forward will be considered. The Council said it has some concerns in its assessment against the criteria in Policy HO 4, pointing to the requirement to minimise impact on the surrounding landscape, but that these were outweighed by the personal circumstances of the appellant.
69. The Council has not cited conflict with Policy HO 4 in its reasons for refusal. It explained that it differentiates between the requirement to minimise impact on the surrounding landscape in Policy HO 4 and the requirements of Policy EN 2 which I have considered above, and that the former should be regarded in respect of the character and appearance of the site. Adopting this interpretation of Policy HO 4 I find that the development, by virtue of the proposed landscaping scheme minimises its impact on the character and appearance of Malthouse Lane and Long Lane.
70. The intended occupants of the development are mixed Romany Gypsies and Irish Travellers who meet the definition set out in the PPTS. Safe access, parking and servicing can be provided, and the site is isolated from other development such that activities on it would not cause significant disturbance. There are facilities such as schools, shops and services within a reasonable distance of the site and a safe and suitable living environment can be provided.
71. Taken together the development performs well against the criteria set out in Policy HO 4 and this weighs significantly in favour of the appeal.
72. The Council said that it has not had any applications since 2017 and could only point towards transit pitches in terms of sites which were available. The appellant made the point that given the constraints of the District in terms of landscape and habitat designations and flood risk zones there are limited locations like the appeal site where development of the type proposed could go. However, from the evidence before me there are large areas of the District which are not subject to these levels of control. Nevertheless, there is no evidence of alternative sites available to the appellant at this time; he and his family cannot return to Kent because their pitch has been re-let or live with family in Kent or East Sussex where

waiting lists for pitches are very long. This weighs significantly in favour of the appeal.

Site Safety – Proximity of the Flogas Site

73. Interested parties have raised concerns about the proximity of the Flogas site to the appeal site and the operators of Flogas have submitted objections. These are on the basis that an accident and potential explosion at the Flogas site could have catastrophic consequences for the appellant and his family.
74. The appeal site is in a Health and Safety Executive (HSE) Major Hazard Zone. The Council considered this when it determined the application. It reached the view that in the light of the fact that the HSE did not advise against the development it had no grounds to refuse the application against the relevant local planning policy.
75. The objections from Flogas include a map which identifies the appeal site as within the middle zone for consultation with the HSE. This is consistent with the information provided by interested parties and the Council. Flogas is concerned that the HSE applied the wrong sensitivity level in its assessment, 2 rather than 3. Level 2 is for the general public at home and involved in normal activities, but Level 3 applies to vulnerable members of the public including children.
76. The appellant has provided a copy of the HSE's land use planning methodology. Based on this information, the correct sensitivity level is Level 2 which applies to individual homes including residential caravans. This is because Level 3 applies to residential institutions such as hospitals or prisons where occupants may be particularly vulnerable to injury or where emergency evacuation may be very difficult. On this basis the outcome of the HSE consultation is correct and the proximity of the Flogas site and its potential impact on the safety of the occupiers of the appeal site weighs neither in favour nor against the appeal.

Personal circumstances

77. The appellant and his partner have three children, one of which is under five. The two older children have attended a local school for 3 years since they started school just after moving onto the site in September 2022. Their parents consider that they have benefited greatly from going to school and save for when they are travelling the children's attendance is high. One of the children benefits from specialised support at school. The family are all registered at the local doctor's surgery, and some have particular health needs.
78. The appellant, his partner and their children have friends in the village from the settled community which demonstrates a degree of integration which fosters good relationships and ensures equality of knowledge about access to local services and facilities. The children have space to play outside and interact with the animals on the site.
79. The personal circumstances in this case reflect a similar situation which was recognised by the Inspector in The Paddocks appeal decision (Appeal Ref. APP/Y3615/A/14/2228519) which has been brought to my attention by the appellant.

European sites – Recreational Pressures

80. The site is located within the Zone of Influence of The Broads SAC/Ramsar and the Broadland Special Protection Area (SPA). These sites are important habitats for birds and other species. Policies SS4 and EN9 of the Core Strategy seek to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development.
81. The Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a development may have on a Habitat Site, must consider mitigation within the framework of an AA rather than at the screening stage. This responsibility now falls to me within this appeal.
82. The Broads SAC/Ramsar and the Broadland SPA are used for public recreation and therefore the development is likely to generate an increased recreational use and thus, in combination with other development, have a significant effect on the features of interest of the Habitat Sites.
83. The GIRAMS contribution which has been paid may provide mitigation against any harmful impacts from the development on the Habitats Sites in accordance with an adopted mitigation strategy. However, as I am intending to dismiss the appeal on other grounds, I do not need to undertake an AA, or give any further consideration to a Habitats Regulation Assessment, as there is no prospect of planning permission being granted.

Planning Balance

84. The development has a harmful effect on the landscape character of the surrounding area, and the potential to adversely affect the integrity of The Broads SAC/Ramsar contrary to the development plan. It also constitutes intentional unauthorised development which attracts moderate weight against the appeal.
85. Weighing significantly in favour of allowing the appeal are the lack of supply of gypsy and traveller sites against the assessed need, the contribution which the site would make to meeting the need for gypsy and traveller sites and the absence of any alternative sites. Furthermore, the development performs well against the criteria set out in Policy HO 4 of the Core Strategy against which proposals for gypsy and traveller sites fall to be considered.
86. The Council cannot demonstrate an up to date five year supply of deliverable sites for gypsies and travellers. In these circumstances the PPTS states that the provisions of paragraph 11(d) of the Framework apply. However, the presumption in favour of sustainable development referred to in paragraph 11(d) is disallowed where the development is likely to have a significant effect on a habitats site, either alone or in combination, unless an appropriate assessment has concluded it will not adversely affect the integrity of the site.
87. Given the doubt that remains regarding the risks associated with the use of the cess tank, I have been unable to conclude that the development will not have an adverse effect on the integrity of The Broads SAC/Ramsar and to reach a positive outcome on the Appropriate Assessment. Consequently, the harm to The Broads SAC/Ramsar provides a strong reason for refusing the development and the presumption in favour of sustainable development does not apply in this case.

Human Rights including the Best Interests of the Child and the Public Sector Equality Duty

88. There is at least a possibility that dismissing the appeal would result in the appellant and his family becoming homeless, given that I have concluded that there is no suitable alternative site for them to move to. This would amount to a significant interference with their rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. However, the right for respect for private and family life is a qualified right and the rights of the individual must be balanced against the needs of the community.
89. I have considered all of the matters raised by the appellant including the lack of availability of alternative accommodation and the personal circumstances of themselves and their family. The only alternative for the family appears to be a roadside existence, which would have significant implications for their family life. In particular this may result in the children being unable to attend school on a regular basis. Given the record of attendance by the two children of school age, one of whom has an important assessment coming up in the next school year and that one child is very young, this would clearly not be in the best interests of the children.
90. Turning to the PSED, enabling the family to remain on the site, with the benefit of planning permission to establish a lawful use of the land has the potential to foster and continue good relations between the family and other people in the local community and to eliminate discrimination. The friendships which have been formed are a positive sign of this.
91. Interference with the rights of the appellant and his family would not be a proportionate response to the harm which I have found to landscape character. However, I have a duty under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 to carry out an AA which is necessary to enable me to ascertain that the development will not adversely affect the integrity of, in this case, The Broads SAC/Ramsar. I have been unable to positively discharge this duty or to conclude that there is an overriding need for the development. Consequently, such interference would be a proportionate response in pursuance of the well-established and legitimate aim of the protection of Habitats Sites.
92. A time limited consent would result in less disruption for the appellant and his family. This would provide them with the opportunity to explore other options such as securing an alternative site or resolving the issue of mitigation of the impacts on The Broads SAC/Ramsar. However, for the reasons set out above this is not appropriate on a three year basis given the risk to the integrity of the habitats sites. There is also no substantive evidence before me to suggest that these matters could be resolved in a shorter timeframe than the suggested three year period.
93. The appellants consider that in the event that the appeals are dismissed it would be disproportionate to uphold the enforcement notice. They request that I do not confirm/uphold the enforcement notice and allow the site to function on a 'tolerated basis'. This would allow for the submission and approval of a permanent permission based on the purchase of environmental credits and the appropriate assessment being passed. The appellant did not explain the mechanism by which I could make such a decision.

94. However, as discussed at the Hearing, the root of the appellant's concern is that the Council could decline to determine a future planning application under Section 70C of the Planning Act 1990 which relates to land the subject of a pre-existing enforcement notice. The Council has discretion in this matter, and it does acknowledge that a materially different application may be accepted. An application to replace the cess tank with a package treatment plant and with access to environmental credits could be regarded as materially different.

Conclusion

95. The development conflicts with the development plan and the material considerations do not indicate that Appeal C should be decided other than in accordance with it. Appeal C is therefore dismissed. There will be no violation of the appellant's or their family's human rights, and the protection of the public interest cannot be achieved by means that are less interfering with their rights.

Appeals A and B – Ground (g)

96. An appeal on ground (g) is on the basis that the compliance period specified in the notice falls short of what should reasonably be allowed. The appellants suggest that the compliance period of 9 months set out in the notice should be varied to 18 months in relation to the cessation of the use for residential purposes and the residential occupation of the caravan and removal of the mobile home and portacabin and 21 months for the removal of the hardstanding, septic tank and the post and rail fencing.
97. In support of their appeals, the appellants say that an extended period of compliance is necessary given the lack of alternative accommodation for the family and the difficulties in finding another site and acquiring planning permission. They also stress the potential for homelessness which would not be in the best interests of the children.
98. The Council states that it is sensitive to the appellants circumstances but that in its view they have had a significant period, of nearly 3 years on the land, to find alternative accommodation given the appeal process. The Council also says that its Housing team would be able to support the appellants to find alternative accommodation.
99. The appellants are entitled to consider that their appeals will succeed and that success may give rise to the enforcement notice being corrected, varied or quashed. They will not know before the appeals are decided what the requirements of the enforcement notice will ultimately be. Therefore the suggestion by the Council that the period for compliance should not be extended because the appellants have had time to find alternative accommodation during the application/appeal proceedings is not supported.
100. A variation to the enforcement notice, to allow the site to be occupied for 18 months, would not be reasonable given the ongoing potential for harm to the integrity of The Broads SAC/Ramsar which I have found in respect of Appeal C. However, the compliance period of 9 months set out in the enforcement notice would have the effect of requiring the family to move off the site part way through the school year. This would particularly impact on the child who has an important assessment next year and consequently the well-being of the family. A

proportionate response would be for the compliance period to be extended to 12 months, and I shall do so.

101. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. Appeal A and Appeal B on ground (g) succeed to that extent.

Sarah Dyer

INSPECTOR

Enforcement Notice Plan



APPEARANCES

FOR THE APPELLANT:

Michael Hargreaves	Michael Hargreaves Planning
Tom Beer	Michael Hargreaves Planning
Tom Harber	Appellant
Shannon Lee	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Philip Rowson	Team Leader
Mark Brands	Senior Planning Officer
Kevin Peacock	Team Leader – Planning Enforcement
Rob Alton	Planning Enforcement Officer

INTERESTED PARTIES:

Tim Harris	Catfield Parish Council
Janet Briscoe	Catfield Parish Council

DOCUMENTS

Agreed Statement of Common Ground

Revised Enforcement Notice Plan