



Appeal Decisions

Hearing held on 11 August 2026

Site visit made on 11 August 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 03 September 2026

Appeal A Ref: APP/F1040/W/26/3378441

Land to the South of Woodville Road, Swadlincote, DE12 6LY

- 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 Sean Rogers against the decision of South Derbyshire District Council.
- The application Ref is DMPA/2025/1096.
- The development proposed is change of use of land to form a 3 pitch family Gypsy and Traveller site and creation of new access road.

Summary Decision: The appeal is dismissed

Appeal B Ref: APP/F1040/C/26/3378427

Appeal C Ref: APP/F1040/C/26/3378428

Appeal D Ref: APP/F1040/C/26/3378429

Land to the South of Woodville Road Swadlincote, DE12 6LY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal B is made by Sean Rogers, Appeal C is made by Michael Connors and Appeal D is made by Mr James Connors against an enforcement notice issued by South Derbyshire District Council.
- The notice was issued on 2 April 2026.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from agricultural land to use for a 3 pitch family gypsy and traveller site, facilitated by the carrying out of drainage and engineering operations comprising the installation of a septic tank, the excavation of the land, laying and compaction of aggregate materials and tarmac to form hardstanding areas and an access track, the raising and grading of land levels, together with the stationing and residential occupation of caravans and the erection of fencing and access gates.
- The requirements of the notice are to:
 1. Permanently cease the use of the land as a 3 pitch family gypsy and traveller site;
 2. Permanently remove from the land, to an authorised place of storage or disposal, all caravans which are stationed on any part of it;
 3. Permanently remove from the land, to an authorised place of storage or disposal, all aggregate material and tarmac and any and all other materials to any part of the surface of the land;
 4. Permanently remove from the land, to an authorised place of storage or disposal, all fencing erected on any part of it;
 5. Restore the land to its condition and appearance prior to the breach of planning control having been effected, by reinstatement of previous levels and flat profile and re-seeding to grass, permanently removing to an authorised place of storage or disposal all material imported onto the land for the purpose of raising its height and altering its profile;
 6. Permanently remove from the land to an authorised place of storage or disposal, the septic tank and all other unspecified drainage and waste disposal equipment.
- The period for compliance with the requirements is 9 months.
- Appeals B, C and D are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Decisions

Decision on Appeal A

1. The appeal is dismissed.

Decision on Appeals B, C and D

2. It is directed that the enforcement notice is corrected and varied by:
 - deletion of the words "to an authorised place of storage or disposal," in paragraphs 5.2, 5.3, 5.4, 5.5 and 5.6;
 - deletion of the words "Policy BNE4" and substitution with "Policy SD4" in paragraph 4.2; and
 - deletion of 9 months in paragraph 6, and substitution with 12 months as the time to comply with requirement 5.1; and 15 months as the time to comply with requirements 5.2, 5.3, 5.4, 5.5 and 5.6.
3. Subject to the corrections and variation the enforcement notice is upheld.

Applications for costs

4. An application for a full award of costs was made by Mr Sean Rogers against South Derbyshire District Council in relation to Appeal A. This application is the subject of a separate decision.
5. An application for a partial award of costs was made by South Derbyshire District Council against Mr Sean Rogers in relation to Appeal A. This application is the subject of a separate decision.

Procedural Matters

6. The Hearing opened at 10am. However, due to road works outside of the event the Appellants and a number of interested parties were delayed. I adjourned for 15 minutes and resumed at 10.15am with the appellants and further interested parties in attendance. I was told later in the day that some interested parties had been so delayed that they decided not to attend the event. However, I understand they had not intended to partake in the Hearing and wished only to observe. I am therefore satisfied that those parties have not been prejudiced.
7. On submission, the planning application the subject of this appeal included a proposal for 3 no day rooms on the Land. However, during the course of the application and in response to a "Substantive Concern" raised by The Coal Authority, those proposed day rooms were removed from the scheme and the description of development was amended and agreed between the Council and the Appellant to that set out in the banner heading above. I have determined the appeal on that basis.
8. Since the Hearing was held a new version of the National Planning Policy Framework, August 2026 has been published (the Framework). The parties have had an opportunity to make comments on the document, and I have had regard to those submissions in my decision.

Appeal A

Main Issues

9. The main issues are:

- whether the development can be safely undertaken having regard to Coal Mining Legacy risks;
- whether the health of future occupiers and users of the site would be at risk by reason of site contamination;
- the effect of the development on the River Mease Special Area of Conservation (SAC); and
- the effect of the development on the route of Public Right of Way Overseal 31 (PROW) and on the amenity of its users; and
- the effect of the development on biodiversity.

Another matter is intentionally unauthorised development and the weight to be attached to it.

10. Other considerations, potentially weighing in favour of the development, include the need and supply of Gypsy and traveller sites, the availability, or lack of alternative accommodation for the occupiers of the site and their other personal circumstances, including the best interests of the child.
11. Integral to my decision-making will be exercising duties under the Human Rights Act 1998. Article 8, a Convention Right¹ (ECHR), affords a person the right for their private and family life, their home and their correspondence. It is a qualified right that requires a balance between the rights of the individual and the needs of the wider community. In applying Article 8 there is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special considerations should be given to their needs and the different lifestyles in the regulatory framework and in reaching decisions on particular cases. Under the Equality Act 2010, I will have regard to the public sector equality duty (PSED).

Reasons

Coal Mining Legacy

12. The appeal site lies in an area which is designated by the Coal Authority as being a "Development High Risk Area". It is understood that within the application site and surrounding area, there are coal mining features and hazards which need to be considered, including probable shallow coal mine workings and a thick coal seam outcrop. Voids and broken disturbed ground associated with such workings can pose a risk to ground instability and may give rise to the emission of mine gases.
13. As set out in Preliminary Matters above, the planning application proposed 3 no day rooms and was accompanied by a Coal Mining Risk Assessment (December

¹ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.

2025, prepared by PKL Chartered Building Consultancy). In response to that proposal The Coal Authority raised a substantive concern/objection. They advised that the proposed day rooms, although modest in terms of their nature, would require substantial foundations and the nature of the development is such that they are not subject to The Coal Authority exemption criteria. Furthermore, the Risk Assessment submitted failed to fully assess the risks posed by identified historic unrecorded shallow underground coal workings.

14. In response to that objection and prior to the determination of the application the subject of this appeal, the appellant amended his application to remove the proposal for day rooms. The amended description for the proposed development was agreed with the Council. Nevertheless, the Council's first reason for refusal related to the application not demonstrating that the site is suitable for development having regard to ground conditions arising from historic mining activities.
15. During the appeal and in response to the inclusion of a package treatment plant (PTP) to deal with the disposal of foul waste within the site, further consultation has taken place between the appellant and The Coal Authority. On 27 July 2026, an officer from the Mining Remediation Authority, confirmed in an email to the appellant, that considering the omission of the day rooms, the application for a proposed change of use would be exempt development, as would be the installation of a PTP. He confirmed that the PTP would constitute minimal ground works and the nature of the development is exempt from Version 8, January 2025 of the Coal Authority's *Guidance for Local Planning Authorities*, and further consultation with The Coal Authority would not be required.
16. At the Hearing, the Council's Development Management Officer confirmed that, considering the information and correspondence now before her, she did not consider that the proposed development would be in conflict with Policy SD4 of the South Derbyshire Local Plan, Part 1, adopted 2016 (LP Part 1) which seeks to ensure that development would not be at risk from historic coal mining activities. From the evidence before me I see no reason to disagree.
17. I conclude that the development can be safely undertaken having regard to Coal Mining Legacy risks and I find no conflict with Policy SD4 of the LP Part 1, the aims of which are set out above. I also find no conflict with Policy P2 of the Framework which requires planning decisions to ensure that the site is suitable for its proposed use taking into account ground conditions and any risk from land instability and contamination.

Contamination

18. The appeal site was formerly rough pasture with a public right of way running through the site. It is clear from evidence provided by local residents, my own site inspection and not disputed by the appellant, that hardcore and building waste has been brought onto the Land to create a hard and level surface for the caravan pitches and to create an access track and parking areas.
19. In response to a request from the local planning authority during the application process, the appellant commissioned and submitted a Phase 1 Desk Study Report to research the history of the site and to identify any potential risks to the health of

construction workers and/or future site users². The Report identifies that there is a low risk of the presence of contamination on the site from asbestos containing materials in the made ground soils associated with the site and adjoining areas. There is thus a risk, if those contaminants are present, that these could adversely impact on human health or environmental receptors. The Report recommends that based on the sensitivity of the proposed residential end use, an intrusive investigation (Phase 2) be undertaken to provide reliable soil/groundwater, and/or soil leachate, contamination data and to assess the potential risk to human health and sensitive environmental receptors. If the Phase 2 investigation were to identify unacceptable levels of contaminants, a detailed remediation scheme would be required.

20. It is the Council's view that the Phase 2 Report should be carried out prior to any decision being made on whether to grant planning permission for the proposed use. They consider that this is necessary because of the proposed residential use of the Land, the use of PROW 31 which traverses the site, and the site's location within the catchment of the River Mease SAC.
21. On the other hand, it is the appellant's view that testing of existing and made ground could be done via the Phase 2 intrusive investigation as recommended by the Phase 1 Report. He believes that the requirement to carry out the Phase 2 investigation and any necessary remediation could be required as a condition of any planning permission granted. Furthermore, he believes the receipts he provided with the application demonstrate that the aggregates that have been deposited on the site were clean and recycled.
22. Although some receipts for material delivered to the site in August 2025 have been provided, there is evidence that further deposits were subsequently made, the details of which are unknown. Moreover, the Phase 1 Report, dated March 2026, recommends that further intrusive investigations are carried out in a Phase 2 Report.
23. It is thus evident that a Phase 2 Report needs to be carried out to determine whether there are contaminants on the site. However, Policy DM3 of the Framework advises that consideration should be given to whether otherwise unacceptable development proposals could be made acceptable through the use of planning conditions. Thus, having regard to the conclusions of the Phase 1 Report, that the presence of contaminants on the site is "low risk" and that the risk is from asbestos, it is necessary to consider whether any adverse effects could be mitigated using planning conditions. A planning condition must be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.
24. The site is proposed for use as a Gypsy and Traveller site and the health of the occupiers of the site is imperative. It is thus necessary for a Phase 2 Report to be carried out and any found contaminants remediated. The site is already occupied by families and subject to an enforcement notice. It seems to me that given the nature of the possible contaminants, and level of risk identified in the Phase 1 Report, it would be reasonable to require by condition a Phase 2 Report to be undertaken within a set time period and if contaminants were found a remediation

² Phase 1 Desk Study Report, Land off Woodville Road, Rev 1, March 2026 - prepared by CC Geotechnical Limited.

strategy could be secured and carried out within an agreed timetable. Any breach of that condition would be enforceable.

25. I conclude that, should I be minded to grant planning permission, then subject to a condition to require a Phase 2 Report and if found to be necessary, a remediation strategy to be secured and carried out within an agreed timetable, the health of future occupiers and users of the site would not be at risk by reason of site contamination. I find no conflict with Policy SD4 of the LP Part 1, the aims of which are set out above, nor Policy P2 of the Framework which requires planning decisions to ensure that the site is suitable for its proposed use, taking into account ground conditions including contamination and the extent to which any risks can be mitigated.

River Mease Special Area of Conservation (SAC)

26. The appeal site is located within the River Mease catchment area where Natural England have indicated that poor water quality due to nutrient enrichment from elevated phosphorus levels is one of the primary reasons for the River Mease SAC being in an unfavourable condition. Thus, any increase in nutrient levels may have an adverse effect on the integrity of the River Mease SAC. By reason of the international designation, the River Mease SAC is afforded the highest protection through UK legislation and Government policy³.
27. The conservation objective for the SAC is to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the favourable conservation status of its qualifying features, namely: watercourses of plan to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachian* vegetation; rivers with floating vegetation often dominated by Water-crowfoot; White-clawed (or Atlantic stream) Crayfish; Spined loach; Bullhead; and Otter.
28. The Habitats Regulations, as amended, requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an Appropriate Assessment (AA) is necessary to establish whether there would be adverse effects on the integrity of the features of the European site and if there are, whether they could be modified through mitigation. Circular 06/2005 sets out that the decision on whether an AA is necessary should be made on a precautionary basis.
29. Natural England has advised the River Mease SAC is in an unfavourable condition due to exceeded nutrient thresholds. Thus, plans and projects affecting sites where an existing adverse effect is known (i.e. the site is failing its conservation objectives), must demonstrate certainty that they will not contribute further to the existing adverse effect. Developments within the catchment of the River Mease must not therefore add to this impact and one way of achieving this is to demonstrate nutrient neutrality. Nutrient neutrality is a principle that ensures a development plan or project does not add to existing nutrient burdens within catchment, resulting in no net increase in nutrients.
30. The appellant understands that it is necessary for the development to demonstrate nutrient neutrality. To that end and acknowledging that there is no capacity within

³ The Conservation of Habitats and Species Regulations 2017, as amended ('the Habitats Regulations') set out the provision and procedures which must be followed to assess the implications of plans and projects on European sites (Regulations 63 and 64).

the mains sewage network to serve the site, he has suggested several different solutions to deal with the increase in waste/foul water that would be produced on the site resultant of its proposed residential use. The initial planning application indicated that three sealed cess pits would be provided within the site, one for each pitch. However, no details of those cess pits have been provided to demonstrate their capacity nor or how the deposited waste would be collected and disposed of. Furthermore, it is understood that although a sealed cess pit was initially proposed, a septic tank has been installed within the site, albeit it has not been brought into use.

31. During the appeal process the appellant further suggested that a PTP would be the most sustainable solution and provided details of various PTP which could provide a nutrient neutral solution⁴. However, the exact details of the unit(s) proposed, their location within the site, required drainage field and suitability of the ground conditions, including infiltration testing and percolation values to demonstrate that the PTP and drainage field would effectively remove pollutants has not been provided.
32. As competent authority, my responsibility is to be confident there is sufficient information available for me to be sure that the development the subject of this application can demonstrate nutrient neutrality and would not have an adverse impact on the integrity of the River Mease SAC. It may be that there is a PTP and foul water drainage scheme that could be implemented and provide mitigation. However, in the absence of a detailed scheme to demonstrate how this would be achieved, I cannot be confident the development would be nutrient neutral. Requiring additional information by condition would not enable me to discharge my responsibility for this decision. In the absence of any substantive evidence to the contrary, the effect of the development without mitigation on the integrity of the SAC is likely to be significant.
33. I have had regard to the Council's decision to screen out a development for a 3 pitch traveller site on Land at Clover Park, Netherseal⁵. At the Hearing the Council confirmed that this development was for an extension to an existing site where there was a likelihood that a connection to the mains sewer could be made in the near future. Moreover, the application proposed a sealed cess pit and would be subject to a legal agreement to secure the disposal of waste outside of the River Mease catchment and to require connection to the mains sewer as soon as permissible. In this case I do not have a detailed scheme for a proposed cess pit, nor a legal agreement to secure a future connection to the mains and a means to control discharge from the cesspit. The development at Clover Park is not therefore directly comparable to the proposal the subject of this appeal and the weight I give to it in my decision is therefore minimal.
34. I conclude, for the reasons given above, that the development would have a harmful effect on the integrity of a protected European site, with particular reference to nutrient neutrality. The development is therefore contrary to Policies SD3 and BNE3 of the LP, Part 1 which reflect the Habitats Regulations in respect of securing the integrity of the SAC. It would also be contrary to Policy N6 of the Framework which states that development proposals affecting a habitats site should be refused unless, amongst other criteria, an appropriate assessment has

⁴ Phosphate and nitrate reduction from Marsh Industries. Ref: MI/NE2025.

⁵ Document 2 at the Hearing.

concluded that the proposal will not adversely affect the integrity of the site (either individually or in combination with other developments), or the proposal can satisfy the derogation tests. Furthermore, in the absence of an agreed drainage and sanitation solution for the occupiers of the site, the development is also contrary to Policy H22 (viii) of the LP, Part 1 which seeks to ensure that sites for Gypsies and travellers provide a safe and acceptable environment for occupiers with regard to, amongst other criteria, drainage and sanitation.

Public Right of Way (PROW)

35. Overseal PROW 31 passes through the appeal site and the planning application initially proposed a short diversion to its lawful route to the north of the site. However, during the application process it became apparent that the land required for that diversion was not within the control of the appellant. Revised plans were subsequently submitted which maintain the PROW along its lawful alignment.
36. The Highway Authority advised that should the route be maintained along its lawful route, or subsequently a diversion order confirmed, in either case the PROW would need to be a minimum width of 2m wide, with post and wire fencing between it and the rest of the development. The path must also have a rolled stone surface.
37. Policy INF2 B(i) of LP Part 1 seeks to ensure that, amongst other things, public rights of way are protected. Whilst there have been third party reports that the route of PROW 31 has recently been blocked by the site occupiers, the proposal seeks to maintain its lawful alignment and details of the proposed footpath surface and its means of enclosure could be secured by condition. It is understood that the path is well used by local residents, including families utilising it as a safe route to the local primary school. A condition to secure those details would therefore be reasonable and necessary to protect and maintain the route of PROW 31 for the enjoyment and amenity of its existing and future users.
38. I conclude, for the reasons given above, that should I be minded to grant planning permission, then subject to a condition to secure the existing route of PROW 31, with details of surface and boundary treatments to be agreed as part of a site development scheme, the development would not conflict with Policy INF2 B(i) of LP Part 1, the aims of which are set out above.

Biodiversity

39. Policy BNE3 of LP Part 1 is consistent with Policy N2 of the Framework which seeks to support development which contributes to the protection, enhancement, management and restoration of biodiversity or geodiversity and delivers net gains in biodiversity wherever possible. In addition, Policy H22 A(i) of LP Part 1 requires the development of Gypsy and traveller sites to not result in an unacceptable impact on the local environment, including, amongst other things, biodiversity.
40. There is some dispute between the main parties as to whether the development should be subject to the statutory framework for biodiversity net gain⁶. The Biodiversity Gain Requirements (Exemptions) Regulations 2024 prescribe exemptions for categories of development to which biodiversity net gain does not apply and includes retrospective planning permissions under section 73A of the

⁶ Schedule 7A of the Town and Country Planning Act 1990, as amended (inserted by the Environmental Act 2021).

1990 Act. It is the Council's view that the application is not retrospective as at the time the first application form was submitted only materials had been brought onto the Land. However, they recognise that subsequent development undertaken has resulted in the degradation of habitats and has been done in an unauthorised manner.

41. It is understood that the application was originally submitted on 22 August 2025 with a revised application form submitted and dated 25 August 2025. Both forms describe the application as retrospective and state that work had commenced on the site. A temporary stop notice was issued by the Council on 22 August 2025⁷, which alleged a breach of planning control described as "the material change of use on the land to use as a Gypsy and traveller site with access off Woodville Road, facilitated by the deposits of hardcore material, without planning permission".
42. From the evidence available, it seems to me that the appeal is in part retrospective and thus covered by s73A of the 1990 Act. That said, the statutory framework requirement for 10% biodiversity net gain does not apply. Indeed, the statutory pre-commencement condition would be incapable of being discharged given that works have commenced. Nevertheless, as set out in the paragraph above, policies within the development plan consistent with government policy seek to protect biodiversity and where possible provide some enhancement.
43. There is no dispute that the unauthorised development has resulted in loss of grassland. Indeed, the appellant's Biodiversity Net Gain Assessment⁸ for the site concluded that the unauthorised development has resulted in a -48.83% net-loss in Habitat Unit (-0.62 habitat units). However, considering the size of the site and adjoining land within the appellant's ownership, there would be scope for compensatory/additional planting, including hedgerow/tree planting along the site boundaries, which would also improve the visual amenity of the site. Consequently, I am satisfied that enhancements to biodiversity could be secured through a condition attached to the consent should I be minded to allow the appeal, which could be linked to an overall landscaping scheme for the site.
44. I conclude, for the reasons given above, that the proposed development, if subject to a condition as described above, would not have a harmful effect on biodiversity. There would be no conflict with Policies BNE3 and H22 A(i) of LP Part 1 and the Framework, the aims of which are set out above.

Intentionally Unauthorised Development

45. Policy DM8 of the Framework advises that in cases of unauthorised development where consideration is being given to an application for retrospective planning permission, if it is concluded based on the evidence that the unauthorised development was intentional, that fact should be given substantial weight in considering whether to grant planning permission.
46. The appellant does not dispute the retrospective nature of the application, albeit a planning application was submitted at the same time as works commenced on site. Therefore, the appellant clearly did not intend for the development to remain unauthorised and there is an opportunity, if necessary, to impose conditions on

⁷ Document 1 at the Hearing.

⁸ Biodiversity Net Gain Assessment, Tyrer Ecological Consultants Ltd, Nov 2025.

any permission granted. I am also mindful that enforcement procedure is intended to be remedial rather than punitive and that the 1990 Act, as amended, makes provision for retrospective planning permission. However, it is clear that the appellant knew that planning permission was required and carried out development without obtaining that consent, therefore the unauthorised development was intentional and Policy DM8 advises that substantial weight should therefore be given in considering whether to grant planning permission.

Personal circumstances of the occupiers, including the best interests of any children, all in the context of Human Rights considerations and the Public Sector Equality Duty (PSED)

47. I heard at the Hearing and the Occupation Statement⁹ provided during the appeal process, confirms that the site would provide a permanent base for three families, including eight young children. The families have previously resided in the Sheffield Area. However, more recently they have been based around the Leicestershire and Birmingham Area as one of the children regularly attends Birmingham's Children's Hospital and this has often resulted in them residing on the roadside and car parks. The appeal site would provide a permanent home for the three families who support each other. It would provide a home close to Birmingham Children's Hospital and, as confirmed by the family support social worker, would enable the child to attend the hospital regularly but have her important daily care, nutrition and hydration regime at home in an environment where the risk of infection could be managed¹⁰.
48. Article 8 of the ECHR is incorporated into UK law through the Human Rights Act 1998 and provides that everyone has the right for their private and family life, home and correspondence. The duty to facilitate the Gypsy way of life is part of that, and Article 8 must also be considered in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. This states that the best interests of the child shall be a primary consideration. Whilst these interests can be outweighed by other factors, no consideration can be inherently more important.
49. There are young children on the site. Mr Michael Conners told the Hearing that he is keen for his children to have the opportunity to take up education, as this is something that he was unable to do. Having a settled base would enable the children to access education as well as health care. Furthermore, it is also not in the public interest to have families living on the roadside with no access to drainage or facilities to store waste.
50. Dismissing the appeal would give rise to an interference with the occupants' Article 8 rights. Any interference must be in accordance with the law, necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, from the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. In consideration of this appeal, I have also had regard to the PSED contained within the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected

⁹ Occupation Statement, prepared by Mike Carr on behalf of the Appellant, dated 19/07/2026.

¹⁰ Letter from Family Support Social Worker, Birmingham Children's Hospital, dated 16 April 2026.

characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

51. Having regard to the personal circumstances of the site occupiers and for the reasons set out above, I attach substantial weight to all the personal circumstances of the family group, including the best interest of the children.

Other Matters

52. I have had regard to all the other matters raised by local interested parties, including access for emergency services, the capacity of schools and access to local services. I have also considered the works which have been undertaken on the site. However, the access is an established access point, and I have not seen any substantive evidence of any safety issues. Moreover, no objection has been raised by the Council or statutory consultees in this regard, and I am thus satisfied that the increased use of the proposed development would not lead to an unacceptable impact on highway safety.
53. I understand that the local primary school may currently be at capacity. However, not all the children on the site have yet reached primary school age, and in any event, having a settled base will enable them to access the education system, including if necessary private home tutors, which would not be possible if they were on the roadside. I therefore give the current capacity of the local school little weight in my decision. Whilst there may not be a doctors in Overseal, having a permanent address is still necessary and will enable the families to secure health services more widely.

Planning Balance on Appeal A

54. Planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise¹¹.
55. Policy S5.1 of the Framework advises that only certain forms of development should be approved outside settlements. Those permitted forms of development are set out in a list and include development which addresses an evidenced unmet need for gypsy, traveller or travelling showpeople accommodation, provided it meets the criteria in policy HO12: Traveller sites. Policy S5.2 advises that in applying this policy, the circumstances in which the benefits of approving development proposals are likely to be substantially outweighed by adverse effects include, but are not restricted to, situations where the development proposal would fail to comply with one of the national decision-making policies which state that development proposals should be refused in specific circumstances.
56. The local planning authority do not have an up to date 5 year supply of deliverable Gypsy and traveller sites and they accept that the proposal would comply with Policy HO12 of the Framework. The absence of a 5 year supply of sites provides substantial weight in favour of the appeal and the presumption in favour of sustainable development as set out in Policy S3 of the Framework applies. However, I have found that the proposed development will adversely affect the integrity of the River Mease SAC and, having regard to Policy N6 of the

¹¹ Section 38(6) OF THE Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act, 1990, as amended.

Framework, where such harm is identified, the Framework indicates that development should be refused. This matter attracts substantial weight against allowing the appeal.

57. I have also found that the unauthorised development that has taken place was intentional which also attracts substantial weight against allowing the appeal.
58. I have found no conflict with the development plan in relation to existing ground conditions and in relation to risks from coal mining legacy works or contamination, no harm to interests of biodiversity and no harm to the route or amenity of PROW 31. However, the absence of harm in respect of those main issues is neutral in the planning balance.
59. On the other side of the balance, I have found that it would be in the best interests of the children on the site to allow the appeal, and this factor together with the site residents' overall personal circumstances and the lack of alternative accommodation carries substantial weight, all in the context of human rights and the PSED.
60. In relation to Article 8 of the ECHR, safeguarding the natural environment is relevant to both the economic well-being of the country and the rights and freedom of others. Under PSED, eliminating discrimination and advancing equal opportunity, in terms of providing decent places to live, may often necessitate treating Gypsies and travellers more favourably than the settled community. Human Rights and PSED considerations will be relevant to my consideration of ground (g) in the enforcement appeal.
61. I conclude that the adverse impacts I have identified of granting planning permission significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and having particular regard to key policies for safeguarding the natural environment. The development is not therefore sustainable and there is conflict with Policies S3 and S5 of the Framework. The dismissal of the appeal is a proportionate response.

Appeal B, Appeal C and Appeal D

The Enforcement Notice

62. Requirements 2, 3, 4, 5 and 6 as set out in paragraph 5 of the Notice all require the removal of items and/or development from the Land to an "authorised place of storage or disposal". However, an "authorised place" is not precise, for example, what the appellant considers to be "authorised" and what the Council consider to be "authorised" may differ. It is sufficient for the unauthorised development/items to be required to be removed from the Land. It was agreed at the Hearing that there would be no injustice to either party if I were to correct the requirements of the Notice to remove reference to "an authorised place of storage or disposal".
63. In addition, the Council confirmed that there is an error in paragraph 4.2 of the Notice with Policy BNE4 being cited in error. The correct policy reference is Policy SD4. I have corrected the Notice to remedy that error.

Appeals B, C and D on ground (g)

64. The issue is whether the compliance period of nine months is reasonable and proportionate. The appellants have requested a period of 15 months to cease the use of the site for residential purposes and then a further 3 months to clear the site and return it to its former condition.
65. For the reasons given above in Appeal A, I have refused to grant a planning permission. However, I am mindful that there is likely to be a technical solution in relation to foul water drainage whereby it may be possible to mitigate the harmful effects I have identified to the integrity of the River Mease SAC through Nutrient Neutrality. Unfortunately, the precise details of how that could be achieved were not available in this appeal. That said, the decision I have come to is, having had regard to the personal circumstances of this family group, that a period of 12 months would be a reasonable time period to cease the use of the Land as a 3 pitch family Gypsy and traveller site. Twelve months would be sufficient time for the families to find alternative accommodation and/or explore their options with the local planning authority with a possible application for planning permission to include details of how the site would be drained to safeguard the integrity of the River Mease SAC and thus overcome the harm I have identified in this appeal. A period of 15 months to clear and restore the Land to its condition and appearance prior to the breach of planning control would be reasonable and proportionate.
66. The appeals on ground (g) thus succeed to that extent.

Conclusion on Appeal A

67. For the reasons given above, I conclude that Appeal A is dismissed.

Conclusions on Appeals B, C and D

68. For the reasons given above, I conclude that the appeals succeed to the extent indicated under ground (g). I shall uphold the enforcement notice with corrections and a variation.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mike Carr, Chartered Town Planner, Mat Design Limited

Sean Rogers

Michael Conners

James Conners

Rebecca Conner- Rogers

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Atherton Development Management Officer

Amanda Hammond Policy Manager

Alan Barrett Enforcement Officer

INTERESTED PARTIES:

Anthony Cobley, on behalf of Samantha Niblett MP

Amy Wheelton, Local Councillor and County Councillor

Ann Hughes, Overseal Parish Council

Sezal Jones, local resident

DOCUMENTS at the Hearing

1. Temporary Stop Notice, dated 22 August 2025.
2. Correspondence from Environment Agency, dated 5 August 2025 and 14 April 2026 and Council's Habitat Regulations Assessment, all in relation to Application Ref: DMPA/2024/1510, Clover Park, Netherseal.
3. Natural England, European Site Conservation Objectives for River Mease SAC and Map of the River Mease Catchment Area.