

Proof of Evidence – Planning Enforcement S174 Appeal

**David Steel BA (hons)
Senior Planning Enforcement Officer**

Appeals by Mr Adam Willis and Mrs Yasemin Willis under Section 174 of the Town and Country Planning Act 1990 in respect of:

The enforcement notice issued on 17th November 2025 against the breach of planning control involving *“Without planning permission, the unauthorised operational development involving the erection of a building and shed, in the approximate location marked X on the attached plan”*

and

“Without planning permission, the unauthorised material change of use of the land for residential purposes, on the land outlined in red on the attached plan”.

Lead appeal reference: APP/D3505/C/25/3376611 & Linked cases
APP/D3505/C/25/3376612

Site address:

Land South of 30 Edies Lane, Leavenheath, Colchester, Suffolk, CO6 4PA

March 2026

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1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 I am David Steel and I hold the post of Senior Planning Enforcement Officer – Babergh District Council, I have held a position as a Planning Enforcement Officer since May 2022. I have certified qualifications in Planning Enforcement, PACE Codes C & E, and IOSH Managing Safely.
- 1.2 I have a little under 4 years’ experience in planning enforcement with Babergh and Mid Suffolk District Councils. My principal experience is with planning enforcement, though I also have experience within development control and heritage matters from my time within the Local Planning Authority. Prior to my employment with Babergh & Mid Suffolk District Councils I was employed at Suffolk County Council from January 2021 working in Public Health at a Higher Tier Local Authority level. I have other experience in private sector security, and licensing (18+ licensable activities).
- 1.3 I presently hold the position of Senior Planning Enforcement Officer and have done so on an Acting-up Basis since June 2023, and on a permanent basis since July 2024.

2.0 INTRODUCTION AND FACTUAL BACKGROUND

- 2.1 On 17 November 2025 Babergh District Council issued the enforcement notice that is the subject of this appeal. The notice is directed at the unauthorised erection of a building and shed on land (“the site”) south of 30 Edies Lane, Levenheath, and the change of use of the land to residential purposes. The notice has been appealed on grounds (a), (c) and (d) of section 174(2) of the Town and Country Planning Act 1990. My evidence addresses these grounds of appeal.
- 2.2 The site is in the village of Levenheath and the parish of the same name which lies both east and west of the A134 road. The parish is partially located within the Dedham Vale National Landscape (NL) area, which extends to the east, west and south. The settlement’s larger area of housing and population, known as Levenheath High Road, is to the west of the A134, which this site sits within. The parish and village are approximately halfway between the City of Colchester in Essex, and Town of Sudbury in Suffolk.
- 2.3 The great majority of the site is located outside the long established settlement boundary for Levenheath for the purposes of the Babergh and Mid Suffolk Joint Local Plan, Part 1 (November 2023) (“the JLP”): see policy SP03 and the Policies Map. Likewise, the great majority of the site is outside the Levenheath – High Road settlement boundary in the Levenheath Neighbourhood Plan 2022-2037 (“the LNP”). A copy of the settlement boundary as shown on the Levenheath village map taken from the Babergh Local Plan 2006 Proposals Map (which is carried forward in the JLP and LNP) is at **Appendix 13**. The unauthorised building and shed are outside the settlement boundary.
- 2.4 The site is further described in paras 2.1 through 2.5 of the Council’s Statement of Case, January 2026.
- 2.5 The existing dwelling at 30 Edies Lane was granted planning permission under reference B/89/1855 (Outline) for *ERECTION OF 2 DETACHED BUNGALOWS*

WITH DETACHED GARAGES AND CONSTRUCTION OF JOINT VEHICULAR ACCESS (EXISTING BUNGALOW TO BE DEMOLISHED). This was followed by reserved matters approval reference B/90/01219 (part submission of reserved matters) for *EXTERNAL APPEARANCE OF DETACHED BUNGALOW AND GARAGE, THE MEANS OF ACCESS TO AND LANDSCAPING OF THE SITE AS AMENDED BY THE APPLICANTS REVISED DRAWING NO 1147/A/5 RECEIVED ON 01.03.91 AND AMPLIFIED BY APPLICANTS LETTER DATED 28.02.91*

- 2.6 Other than submissions for pre-application advice and a building control record (see paras 3.0 through 3.2 of the Council's Statement of Case January 2026), and a subsequent application (DC/26/00213) for planning permission for 1.no self-build dwelling to the west of the current dwelling which was received by the LPA after the service date of the enforcement notice, there is no record of any planning applications relating to 30 Edies Lane received between March 1991 to 20th of January 2026.
- 2.7 The recent submission of the application for a new dwelling speaks to the intention for ongoing and further development of the site and land controlled by the Appellants. The site plans and planning statements for DC/26/00213 are therefore supplied in **Appendix 14a** through **14d**.
- 2.8 Copies of the decision notices and building control records are at **Appendices 2a – 2e** within the Council's Statement of Case.
- 2.9 The site has not been subject to any applications for Certificates of Lawfulness in respect of buildings, outbuildings, use/s of, or changes to use/s of land.
- 2.10 The extent of the land associated with the dwelling granted as garden is shown on the plans at **Appendices 4a – 4b** with respect to the B/89 and B/90 permissions.
- 2.11 Furthermore, the extent of the land designated as garden by the appellants' agent, within the request for pre-application advice DC/25/00813, is shown within

Appendices 10a – 10b of the Council’s Final Comments, February 2026 (the proposed site plan is also provided as appendix 3a to the Council’s Statement of Case).

- 2.12 The site has been subject to two planning enforcement cases and investigations which are explained and described in paras 5.8 through 5.13 of the Council’s Statement of Case, alongside the **Appendices 6a** through **6c**. The first is EN/25/00366, July 2025. This case related to the alleged removal of trees and works to the rear of no.30.
- 2.13 The second is EN/25/00533, October 2025. This case followed a report that the development subject to the Notice was being constructed without the benefit of planning permission. The enforcement notice dated 17th of November 2025 was subsequently served upon the Appellants.
- 2.14 On 27th February 2026 I carried out a site visit with a colleague, Chloe Anderson, which had been agreed with the Appellants. The visit was undertaken to further explore and understand the relationship of the unauthorised development to the dwellinghouse, its effect on neighbouring residential amenity, locality and other assessment including whether the shed and building under construction meet the limitations of Class E permitted development relating to their size, dimensions and distance/s from shared boundary.
- 2.15 The dimensions of the shed and building under construction, as well as the distances of each respectively from the shared boundary to no.30a are submitted alongside a series of photographs with indicative positions and directions taken on site as **Appendix 15a**.
- 2.16 The measurements taken on site were, in the main, agreed on-site with the Appellants. There were some points of contention which were overall clarified by mutual agreement during the visit.
- 2.17 A copy of the site visit notes are attached as **Appendix 15b**.

- 2.18 Elevations of the shed and building under construction and a wider site plan have been produced following the site visit. The drawings and plan are indicative and not scaled, though I believe they have been produced accurately insofar as their measurements and representations are concerned.
- 2.19 The shed, were it to be assessed in line with the provisions and limitations as to size and distance to the shared boundary in respect of a Class E incidental outbuilding, appears to accord with such.
- 2.20 It was queried by the Appellants on site as to whether the shed did indeed constitute a “building”, however to date and with respect to previous submissions by the Appellants this fact has not been in contention.
- 2.21 The building under construction remains materially incomplete. It cannot yet support or be used for purposes to which it may be intended.
- 2.22 The building were it to be assessed “as is” in line with the provisions and limitations as to size and distance to the shared boundary in respect of a Class E incidental outbuilding, appears to accord with such. Though it is reiterated that it remains as described, under construction.
- 2.23 The building under construction is observed to be of a double-skinned construction and insulated (or to be insulated).
- 2.24 The distance between lines of rear elevation of the dwellinghouse and the northern elevation of the building under construction was measured as 34.4m.

3.0 **AMENDMENT OF THE ENFORCEMENT NOTICE**

- 3.1 The Council accepts that the enforcement notice is inaccurate in two respects. First, the enforcement notice plan includes land outside the Appellants’ ownership (to the south of properties called Kinnegar and Brylynn). This was a

mistake and can be remedied by excluding that land. A revised enforcement notice plan is at **Appendix 8A** to the Council's Final Comments. At para 2.14 of the Appellants' Final Comments it is said that the Appellants do not oppose this change. No person would be prejudiced by it.

- 3.2 Secondly, the enforcement notice describes the second aspect of the breach of planning control as "Without planning permission, the unauthorised material change of use of the land for residential purposes, on the land outlined in red on the attached plan". The land outlined in red contains woodland (as is common ground) and the notice ought to say: "Without planning permission, the unauthorised material change of use of the land to a mixed use as woodland and residential". I accept that there are various ways in which this mix of uses could be described, but consider that this form of wording is adequate.
- 3.3 The Appellants object to this proposed change, but given that they accept that land within the red line has been used "*as a garden/land ancillary to the Appellants' dwelling*" and that there is woodland as well, I do not consider that there is any merit to this objection. The purpose of the proposed amendment is simply to ensure that the notice accurately describes the breach of planning control. The Appellants' evidence going to the use of the land within the red line should not be affected by this.
- 3.4 The Appellants suggest as an alternative that the enforcement notice plan is further amended to exclude the woodland. They say "*There were and are two areas used differently, with different physical characteristics and a clear line where one use ends and the other starts. The Woodland is woodland with the balance of the land used as garden/ancillary to the dwelling.*" The difficulty with this approach is that it is not clear where the Appellants say the woodland ends and the garden/ancillary use begins. I have already referred to the witness statements included with the Appellants' Appeal Statement. The plans attached to those witness statements appear to show the garden/ancillary use extending

well into the woodland. Given this uncertainty, the Appellants' suggestion is problematic.

4.0 APPEAL GROUNDS (C) AND (D)

4.1 The Appellants' ground (c) appeal is brought on the basis that "The building is situated on land which forms part of the curtilage of the Appellants dwellinghouse. The building is therefore permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted development) (England) Order 2015 (As Amended)": para 9 of the Appellants' Appeal Statement. The Appellants' ground (d) appeal is brought on the basis that "As the part of the Appeal Site upon which the building is situated has been continually used as garden land for a period in excess of 10 years, the use of that area has become lawful through the passage of time and is exempt from enforcement action under Section 171B (2) (a) of the Town and Country Planning Act 1990 (As Amended)": para 17 of the Appellants' Appeal Statement. The evidence relating to these grounds of appeal overlaps and I shall take them together.

4.2 I start with the historical evidence of ownership. The Land Registry records at **Appendices 4d-4g** to the Council's Statement of Case show that the dwellinghouse and land outlined in blue on the enforcement plan are registered under title number SK110332. An extract from the title plan is set out below.

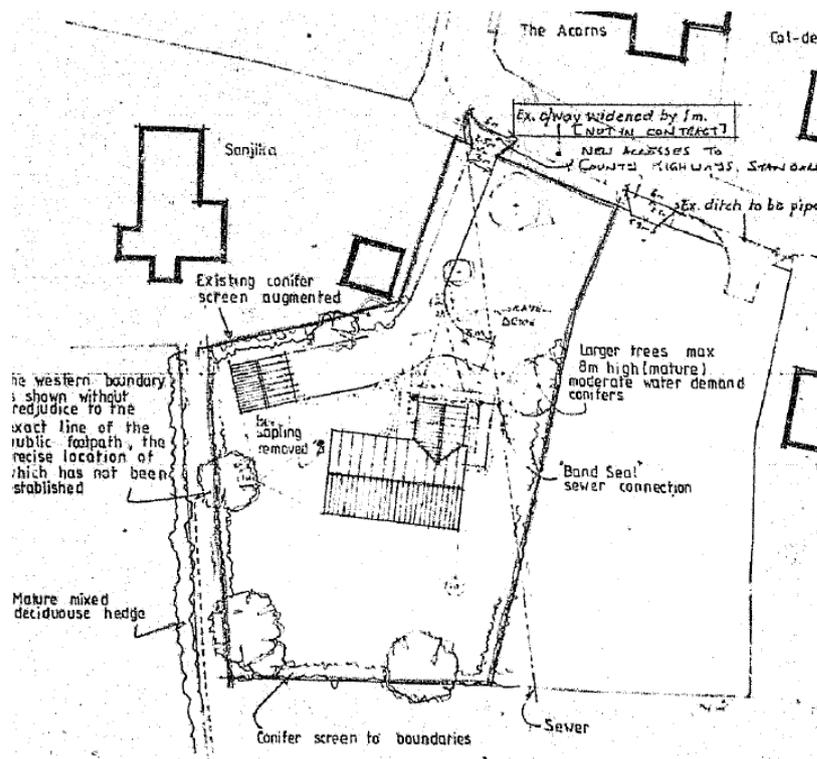


- 4.3 The land to the south of this land and other parcels fronting Edies Lane (i.e. the land outlined in red on the revised enforcement notice plan) is registered under title number SK1314. The register of title and title plan for SK1314 show that from 1947 to 1991 title SK1314 included the land in what is now SK110332, but on 4 November 1991 ownership of the two pieces of land was separated into two titles. This corresponds with the grant of planning permission B/89/1855 and approval of reserved matters B/90/01219.
- 4.4 I can see from the Land Registry records that the two titles SK110332 and SK1314 were acquired together by the Appellants in September 2024. What is not known is how long they were held together before then.
- 4.5 Turning to the planning history, application B/89/1855 was originally submitted with supporting documents and plans that showed a limited site area. Within the planning committee reports on this application the following para was repeated (see documents no.7, page 11 of 40, no.14 page 18, no.21 page 25) - *“The site supports a bungalow and outbuildings and lies on the south side of Edies Lane within a plot having an area of approximately 0.3 hectares (0.8 acres). It is located at the southern extremity of the settlement and has a frontage to Edies Lane of*

approximately 40 metres and an average depth therefrom of approximately 55 metres.” The supporting documents are contained within **Appendix 16a**.

4.6 Drawing 1147/A/5 – October 89, submitted with application B/90/01219, indicates a plot size for the proposed site of 0.33ha which matches approximately the extract of the report referred to above “0.3 hectares”. The drawing is supplied as **Appendix 16b**, document 49, page 14.

4.7 Furthermore, within drawing 1147/A/5 “conifer screen to boundaries” is marked at the edge of the southern portion of site. This drawing is referred to in the reserved matters approval granted in 1991, which included the landscaping of the site as it was at the time. An extract from the drawing is set out below.



4.8 The Inspector’s attention is respectfully drawn to the conditions and reasons for them in B/89/1855, attached as pages 31 through 34 of **Appendix 16a**. Of particular interest are conditions no.3 and no.8. Condition 3 reads: “The dwelling(s) erected pursuant to this permission shall be of a single storey design.”

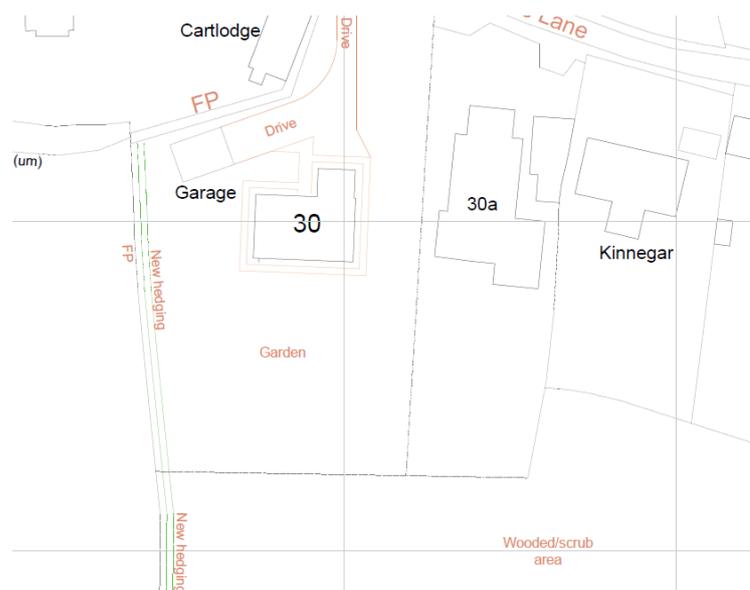
Reason – *“In order to secure a design in scale with development surrounding the site so as to protect the visual amenities and character of the area.”*

- 4.9 Condition 8 reads: *“The detailed landscape/boundary treatment scheme submitted pursuant to Condition 01 above shall be carried out by a date to be first agreed in writing with the Local Planning Authority, and any trees/shrubs removed, dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced with trees/shrubs of similar size and species to those originally required to be planted unless the Local Planning Authority gives written consent to any variation.”*

Reason – *“In order to enhance the appearance of the development in the interest of visual amenity.”*

- 4.10 These conditions, together with the site plans and approved landscaping scheme, allow for the construction of a bungalow within a modest garden. This was, in my opinion, the extent of the curtilage of the bungalow permitted in 1990 and approved in detail in 1991.

- 4.11 In February 2025 the Appellants sought pre-application advice (reference DC/25/00813) in respect of the following development: “Existing bungalow roof to be raised to allow a 'full' first-floor. Front, side & rear two-storey extensions with new cartlodge to front and storage barn to rear. Part of rear extension to be single storey with balcony above.” The existing and proposed site plans and the written advice report are at **Appendices 9a, 10a and 10b** to the LPA’s Final Comments. I note that the existing site plan shows the following:



- 4.12 Making allowances for changes in scale and surveying, it appears to me that the garden area shown on the above plan is not materially different from the garden area shown on the 1990 drawing.
- 4.13 Between the dates of these drawings, the aerial photographs at **Appendix 4c** to the Council’s Statement of Case show a mix of scrub, grass and woodland in the area of the unauthorised building and shed. Over time the woodland appears to have matured.
- 4.14 The Rightmove photographs in **Appendix 4h** to the Council’s Statement of Case were taken, in the council’s presumption circa 2023/2024. Insofar as I can tell from photographs 1 of 24, 3 of 24 and 19 of 24, the garden area outlined in blue on the enforcement notice plan was well kept and of a size in keeping with the bungalow. In contrast, the area behind no. 30A Edies Lane appears to have been overhung and shaded by the woodland trees.
- 4.15 With reference to the contemporaneous notes taken following the enforcement site visit in July 2025 (**Appendix 6a** to the Council’s Statement of Case), the clearance of trees, scrub, vegetation etc. was said by the Appellant, Mrs. Willis, to have been undertaken for reasons of or relating to safety so children could “play” following removal of dead, diseased or dying specimens. This speaks to the

land not being enjoyed at the time of, or prior to, the visit where the clearance had occurred, and continued to occur in support of the unauthorised development of the site. This gives rise to a question of whether the wider area of woodland commensurate with the red line site plan and its use has indeed been continuous, or subject to interruption.

- 4.16 The Council's advocate will make submissions on the law relevant to the assessment of curtilage. Nonetheless, I have applied the law as summarised in paragraph 6.6 of the Council's Statement of Case. I also note what is said at paragraph 132 in the judgment in the Hampshire County Council case:

“Fortunately the extensive array of authorities cited to us on this appeal enables us to do this. We find for example that in the case of modest houses, the curtilage would not on the face of it extend to the whole of 10 acres of pasture land let with a cottage (Trim v Sturminster Rural District Council [1938] 2 KB 508); that a field used for keeping cows was not part of a house (Pulling v London, Chatham, and Dover Railway Co (1864) 3 De G J & S 661); and that paddocks have been held not to be part of the curtilage of houses in both Methuen-Campbell and Burford v Secretary of State for Communities and Local Government [2017] JPL 1300. On the other hand the curtilage does include a wall enclosing a recently expanded part of the garden (Sumption v Greenwich London Borough Council [2008] 1P&CR20).”

- 4.17 Approaching the question of the curtilage of the existing bungalow as one of fact and degree, I have had regard to the following factors.

- The statutory consequence of a finding that the area where the unauthorised building and shed are located is within the curtilage of the bungalow. The consequence would be that permitted development rights in Class E of Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 would apply.
- The respective sizes of the land in issue and the bungalow. The bungalow is a modest building. The land surrounding it edged blue on the

enforcement notice plan seems ample for any domestic needs. It is not clear to me how much of the land to the south of no. 30A the Appellants say is part of the curtilage of the bungalow.

- Ancillary relationship. It is for the Appellants to produce evidence showing what the relationship is and was between the land in issue and the bungalow. At present, there is little evidence to show that the land to the south of no. 30A is ancillary to the bungalow, rather than being part of the woodland.
- Physical layout. The land in issue is offset from the bungalow's rear garden area, and is sandwiched between the rear boundary of no. 30A and the block of trees to the south. The Appellants have cleared some trees from this area, so its layout today is not the same as it was before the Appellants acquired the land.
- Ownership past and present. There are separate titles to the bungalow and the woodland. They are in common ownership at present, but the division between the two seems to have occurred soon after permission for the bungalow was granted, presumably because they were to be put to different uses, with potentially different owners.
- Use and function, past and present. Again, it is for the Appellants to produce evidence of how the area of unauthorised development was being used, and how its function related to the bungalow. I have read the witness statements included with the Appellants' Appeal Statement and note that all the witnesses appear to be saying that an area extending well into the woodland was treated as part of the garden of the bungalow. This seems improbable and I do not consider that weight can be placed on this evidence before it has been tested in cross-examination.

4.18 Taking all the above into account, I consider that the curtilage of the bungalow is confined to the area edged in blue on the enforcement notice plan. It follows that there are no permitted development rights attaching to the land edged red that would allow the part constructed outbuilding to be built.

- 4.19 Provided with the appellant's PCN response at **Appendix 5c** to the Council's Statement of Case is the statement: "*Proximity / physical connection: The land runs immediately behind (or to the side of) the house, with no significant separation (e.g. fence / roadway) from the domestic garden*".
- 4.20 Since then, the Appellants appear to have undertaken additional works, the creation of a hardsurfaced track, which further separates the shed and building from the bungalow.
- 4.21 Accordingly, I do not consider that the Appellants have demonstrated to a satisfactory degree that the works to construct the shed and building are permitted development.
- 4.22 The Council also draws attention to the means of connection (or connections) implied by the presence of bathroom / toilet facilities to the building under construction, amplified by the Appellants' Building Control record submission. The matter of where such connection goes was raised with the Appellants, who did not offer a substantive explanation.
- 4.23 There were various pipes observed during the original site visit in respect of EN/25/00533, and an area of what appeared to be connection on the west side of the building under construction was noted during the site visit on 27th February 2026. The Appellants stated on site that the pipes were to protect wiring, or similar words to that effect.
- 4.24 Furthermore, it is noted by way of observations on the site visit, supplemented by visit photos and measurements, that a wider area of material operation and, as activities normally undertaken by a builder have occurred, surrounding the building under construction.

- 4.25 The Inspector is respectfully invited to consider the size of the building as a whole, including the area of works surrounding it, and the referenced means of connection and utility to enable its erection and construction, and to support its use/s.
- 4.26 The distance from the main dwellinghouse of the shed and building under construction is significant and does not speak to an incidental outbuilding. Furthermore the position of the shed and building under construction on the land is such of being visually screened to a great degree from the main dwellinghouse.
- 4.27 I believe the pictures and photos provided from the site visit 27th of February 2026 speak to the above.
- 4.28 As to the ground (d) appeal, in their Final Comments the Appellants take issue with the allegation that the land enforced against is (in part) in residential use. They say that the land is partly in use as garden/amenity land ancillary to the bungalow. I am not sure if this is simply an argument over how the use enforced against should be described, or if there is something more fundamental at stake.
- 4.29 As to when the unauthorised change of use occurred, I take the view it was when the unauthorised building works for the outbuilding began. At that stage the land affected by these works was not (and could not be) in use as a woodland; it was instead beginning to be used for residential purposes.

5.0 THE HIDDEN GROUND (B) APPEAL

- 5.1 The Appellants say (Final Comments, para 3.23): *“As to the Appellants’ case on ground (b) it is simply this: when the Appellants purchased the property it came with land to include a garden with the Woodland beyond. The Appellants understood the garden as including the land up to the border/junction of the Woodland. This land being grassed with trees and dense overgrowth beyond.”* The Appellants’ belief or understanding is not the issue. If the Appellants wish to argue

that there has been no change of use as a matter of fact (because the land enforced against has always been in mixed or composite use as a woodland and as residential/garden land) it is for them to produce evidence of this. In the circumstances of this case, this ground appears to overlap with the ground (d) appeal and I do not intend to repeat the comments I have made above.

6.0 GROUND (A)

6.1 The JLP, in respect of Policy SP03, states:

Outside of the settlement boundaries, development will normally only be permitted where:

a) the site is allocated for development,

The site in question is not and has not been identified or allocated for development.

b) it is in accordance with a made Neighbourhood Plan,

The area of unauthorised operational development is outside the Leavenheath – High Road settlement boundary in the Leavenheath Neighbourhood Plan 2022-2037 (“the LNP”) and there is no policy in the LNP that supports this development.

c) or it is in accordance with one of the policies of this Plan listed in Table 5;

The applicability of exceptions as per Table 5, were identified and explained to the Appellants within the response to their submission for pre-application advice.

6.2 The development in respect of the erection of the shed and building (under construction) as well as the unauthorised change of use of land does not to the council’s understanding, nor has it so been described or proposed by the appellants to fall under the following policies to meet a table 5 exception - SP04 (1), SP05 (1, 2 and 5), SP07 (1 and 2), SP08 (1), LP01 (1), LP04 (1 and 2), LP05 (1), LP07 (1 and 2), LP09 (2), LP10 (2), LP12 (2), LP13 (1 and 4), LP14 (1), subject to

LP14 (2), LP19 (3a), LP20 (1), LP22 (1), LP25 (1), LP28 (1a) in accordance with LP28 (1b), and LP31(3). I consider policies LP02, LP03 and LP21 further below.

6.3 It is not a point in contention that para 80 of the NPPF (as written within the BMSDC Joint Local Plan – Part 1) but now under para 84 following amendments to the NPPF, applies regarding the unauthorised development in respect of the erection of the building (under construction), the shed, nor the change of use (unauthorised) of land – a) through e) i & ii.

6.4 There are some policies which require further consideration as to their applicability and relevance to the matters at hand.

6.5 **Policy LP02 - Residential Annexes**

1. Residential annexes will be supported where the proposal:

a) Is ancillary and subordinate in scale to the host dwelling;

b) Does not involve the physical subdivision of the residential curtilage;

and c) Is designed to easily allow for the annexe to be integrated later into the main building as a single dwellinghouse when the need no longer exists.

6.6 The building under construction does not accord with nor meet the exceptions in this regard.

6.7 The Appellants have repeatedly conflated and referred to incidental / ancillary as the intended use and purpose of the building, though it is understood that they now assert it will not be used for the purposes of ancillary accommodation. The Inspector's attention is respectfully drawn to the previously supplied PCN responses and supplementary documents to the PCN provided by the appellants.

6.8 It is demonstrable, by virtue of the building's position on the land, that no integration into the main building as a single dwellinghouse is reasonably possible. It is therefore reasonable to not consider an application is being made with reference to any supporting exceptions RE: SP03 Table 5, toward a residential

annexe. It also seems to be implicit in the policy that the annex is within the curtilage of the host dwelling. I have already explained why I do not consider this to be the case here.

6.9 LP03 (1) residential extensions and conversions.

6.10 The development, and land subject to the notice, are not understood nor purported to be or considered to be a residential extension and conversion. Therefore, any exception under this policy is not available to the Appellants.

6.11 LP21 (1) change of use of agricultural land to residential garden

6.12 As already addressed in the Council's Final Comments, an application, if made for a change of use to residential garden land would be considered under LP21 – 'Change of use of agricultural land to residential garden', of the Babergh and Mid Suffolk Joint Local Plan.

6.13 Policy LP21 does not permit operational development. As to the change of use permitted by the policy, it is from agriculture to residential garden land or land ancillary to a residential dwelling, subject to:

“a. The location, size and scale of the proposal not having an adverse impact on the landscape characteristics and biodiversity of the locality;”

“Agriculture” is defined in section 336(1) of the 1990 Act. It does not include woodland use unless that use is ancillary to the farming of land for other agricultural purposes. That is not the case here. For this reason policy LP21 would not support the change of the use of the woodland to garden/ancillary land. Furthermore, the Appellants have provided no evidence of the effect of the change of use on biodiversity.

7.0 HARM TO AMENITY, ENVIRONMENT & CHARACTER

- 7.1 The enforcement notice alleges that “the operational development and the change of use result in unacceptable harm to the character and nature of the surrounding area and give rise to harm to neighbouring residential amenity”. The effect of the unauthorised development on the character and amenity of the area is best appreciated on site.
- 7.2 The woodland area comprises primarily native species of tree, including but not limited to; Ash, Oak, Cherry, other fruiting trees, blackthorn, as well as field maple. The Council’s Arboriculture Officer agreed with the identification of these following a review of the site imagery provided to him. The trees (both remaining and removed) were described as having “good” biodiversity and environmental value.
- 7.3 The Arboriculture Officer further stated that the *“amenity value is not as high it’s environmental importance, but could be described as moderate, primarily due to the adjacent PROW and the limited views from other public viewpoints”*. Through their online mapping system, the Forestry Commission describe the woodland as “Priority Habitat” and “Deciduous woodland”.
- 7.4 The site photos collected during the various visits and submitted with the council’s previous statements, final comments, and within further appendices submitted demonstrate an already significant loss of trees and therefore harm to the site’s environmental importance and amenity value in respect of trees & habitat. In addition, the presence of the unauthorised development adjacent to the woodland detracts from its natural beauty.
- 7.5 Whilst it is accepted that there is no intrinsic and specific “right” to a view, outlook is an amenity factor, and blocking a natural woodland setting harms that amenity.

8.0 RESPONSE TO VARIOUS MATTERS OF COMPLAINT

8.1 In the Appellants' Final Comments various criticisms are made of the Council, including that it has not been even-handed, and that I trespassed on the Appellants' land. As this appeal is confined to the statutory grounds of appeal concerning the Appellants' land, I do not consider it is necessary or appropriate to talk about the potential for enforcement action concerning other properties.

8.2 As to the allegation of trespass, I am empowered under section 196A of the Town and Country Planning Act 1990 to enter land for the purposes of enforcement if there are reasonable grounds for doing. I do not accept that I have trespassed on the Appellants' land.

9.0 SUGGESTED CONDITIONS

9.1 The Council respectfully request that if the ground (a) appeal succeeds the following suggested conditions (or conditions achieving the same result) are imposed:

- a) The approved development must accord with the plans submitted in support of the Ground (a) appeal, except where varied by this decision or by any conditions attached hereto.
- b) The building and shed shall be used only for purposes incidental to the enjoyment of the dwellinghouse known as no.30 Edies Lane and shall not be used as independent residential accommodation.
- c) The building and shed hereby permitted shall be used only for purposes incidental to the enjoyment of the dwellinghouse and

shall not be used for any commercial, business, or industrial activity.

- d) No further development shall commence until a Biodiversity Net Gain Report, including the completed statutory biodiversity metric, habitat survey information, and a Biodiversity Gain Plan, has been submitted to and approved in writing by the Local Planning Authority.
- e) The development shall thereafter be carried out in full accordance with the approved Biodiversity Gain Plan, including all habitat creation, enhancement and management measures, and these shall be retained and managed for a minimum period of 30 (or other period to be specified by the inspector) years.
- f) The submitted Biodiversity Net Gain Report shall include details of on-site biodiversity enhancements, including habitat creation, native planting, ecological features and long-term management prescriptions. The approved enhancements shall be implemented prior to first occupation or use of the development and maintained thereafter.
- g) No further development shall commence (or no above-ground works shall take place) until a detailed Landscaping Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include: (a) a scaled plan identifying all existing trees, hedges and shrubs on the site; (b) details of those to be retained, together with measures for their protection during construction; (c) details of any vegetation to be removed; (d) details of all proposed planting, including species, sizes, planting densities and locations; and (e) a planting schedule and maintenance programme for establishment.

- h) Any tree, hedge or shrub planted as part of the approved Landscaping Plan that dies, becomes diseased, is removed or fails to establish within ten years of planting shall be replaced in the next planting season with a specimen of similar size and species, unless otherwise agreed in writing by the Local Planning Authority.
- i) No external lighting shall be installed, operated or displayed at any time unless approved in writing by the Local Planning Authority.
- j) No development shall commence, including any demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include details of: (a) hours of construction; (b) measures to control noise, vibration and dust; (c) prohibition of the burning of waste on site (d) measures for dealing with the disposal of waste and materials; The development shall thereafter be carried out only in accordance with the approved CMP.
- k) Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Article 3, Schedule 2 Part 1 Classes A to E and H and Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification): – no garage, car port, fence, gate, wall or any other means of enclosure, outbuilding or structure shall be erected within the hereby approved amenity space, except pursuant to the grant of planning permission on an application made in that regard.

9.2 The overarching reason for the suggested conditions is – To enable the Local Planning Authority to retain control over the development in the interests of the

amenity of the locality and to safeguard local distinctiveness. So far as Biodiversity Net Gain is concerned, although planning permission granted in an enforcement appeal is not subject to the statutory BNG condition, JLP policy SP09(4) provides: “*Through biodiversity net gain, all development will be required to protect and enhance biodiversity ensuring the measures are resilient to climate change*”.

SUMMARY AND CONCLUSIONS

10.0 QUALIFICATIONS AND EXPERIENCE

I am David Steel and I hold the post of Senior Planning Enforcement Officer – Babergh District Council, I have held a position as a Planning Enforcement Officer since May 2022.

11.0 INTRODUCTION AND FACTUAL BACKGROUND

11.1 On 17 November 2025 Babergh District Council issued the enforcement notice that is the subject of this appeal. The notice is directed at the unauthorised erection of a building and shed on land (“the site”) south of 30 Edies Lane, Leavenheath, and the change of use of the land to residential purposes. The notice has been appealed on grounds (a), (c) and (d) of section 174(2) of the Town and Country Planning Act 1990.

11.2 The site is in the village of Leavenheath and the parish of the same name which lies both east and west of the A134 road. The parish is partially located within the Dedham Vale National Landscape (NL) area.

11.3 The majority of the site is located outside the settlement boundary for Leavenheath: the unauthorised building and shed are outside the settlement boundary.

11.4 The site is further described in paras 2.1 through 2.5 of the Council’s Statement of Case, January 2026.

11.5 The existing dwelling at 30 Edies Lane was granted planning permission under reference B/89/1855 (Outline) and reserved matters approval reference B/90/01219 (part submission of reserved matters).

11.6 Other than submissions for pre-application advice and a building control record (see paras 3.0 through 3.2 of the Council’s Statement of Case January 2026), and a subsequent application (DC/26/00213) for planning permission for 1.no self-

build dwelling to the west of the current dwelling, there is no record of any planning applications for the property between March 1991 and January 2026.

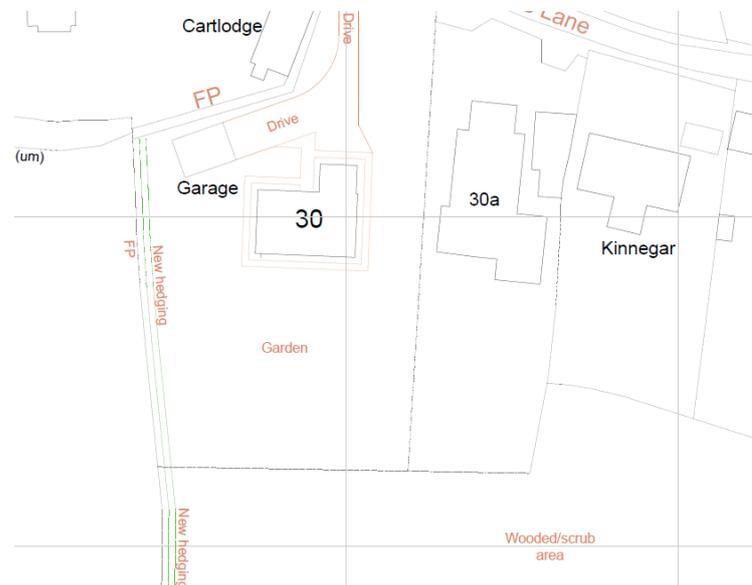
- 11.7 Copies of the decision notices and building control records are at **Appendices 2a – 2e** within the Council’s Statement of Case.
- 11.8 The site has not been subject to any applications for Certificates of Lawfulness in respect of buildings, outbuildings, use/s of, or changes to use/s of land.
- 11.9 The extent of the land associated with the dwelling granted as garden is shown on the plans at **Appendices 4a – 4b** with respect to the B/89 and B/90 permissions.
- 11.10 The site has been subject to two planning enforcement cases and investigations which are explained and described in paras 5.8 through 5.13 of the Council’s Statement of Case, alongside the **Appendices 6a** through **6c**. The first is EN/25/00366, July 2025, relating to the alleged removal of trees and works to the rear of no.30. The second is EN/25/00533, October 2025, and followed a report that the development subject to the Notice was being constructed without the benefit of planning permission.

12.0 APPEAL GROUNDS (C) AND (D)

- 12.1 The Appellants’ ground (c) appeal is brought on the basis that the building is within the curtilage of the Appellants dwellinghouse and is, therefore, permitted development. The Appellants’ ground (d) appeal is brought on the basis that part of the Appeal Site has been continually used as garden land for a period in excess of 10 years.
- 12.2 Land Registry records show that the dwellinghouse and land outlined in blue on the enforcement plan are registered under title number SK110332.

- 12.3 The land to the south of this land and other parcels fronting Edies Lane (i.e. the land outlined in red on the revised enforcement notice plan) is registered under title number SK1314.
- 12.4 The Land Registry records that the two titles SK110332 and SK1314 were acquired together by the Appellants in September 2024. What is not known is how long they were held together before then.
- 12.5 Application B/89/1855 was originally submitted with supporting documents and plans that showed a limited site area. Within the planning committee report it was stated that *“The site supports a bungalow and outbuildings and lies on the south side of Edies Lane within a plot having an area of approximately 0.3 hectares (0.8 acres).”*
- 12.6 Drawing 1147/A/5 – October 89, submitted with application B/90/01219, indicates a plot size for the proposed site of 0.33ha which matches approximately the extract of the report referred to above “0.3 hectares”.
- 12.7 Drawing 1147/A/5 is referred to in the reserved matters approval granted in 1991 and included the landscaping of the site as it was at the time, including a line of conifers across the southern boundary of the plot associated with the new dwelling.
- 12.8 Conditions attached to permission B/89/1855 included landscaping, in order to *“protect the visual amenities and character of the area.”*
- 12.9 These conditions, together with the site plans and approved landscaping scheme, allow for the construction of a bungalow within a modest garden. This was, in my opinion, the extent of the curtilage of the bungalow permitted in 1990 and approved in detail in 1991.

12.10 In February 2025 the Appellants sought pre-application advice (reference DC/25/00813) for works to the dwelling, and a storage barn on the land to the south. I note that the existing site plan shows the following:



12.11 Making allowances for changes in scale and surveying, it appears to me that the garden area shown on the above plan is not materially different from the garden area shown on the 1990 drawing.

12.12 Between the dates of these drawings, the aerial photographs at **Appendix 4c** to the Council's Statement of Case show a mix of scrub, grass and woodland in the area of the unauthorised building and shed.

12.13 Rightmove photographs appear to indicate the garden area outlined in blue on the enforcement notice plan was well kept and of a size in keeping with the bungalow. In contrast, the area behind no. 30A Edies Lane appears to have been overhung and shaded by the woodland trees.

12.14 The clearance of trees, scrub, vegetation etc. was said by the Appellant, Mrs. Willis, during the site visit in July 2025, to have been undertaken for safety so children could "play". This speaks to the land not being enjoyed at the time of, or prior to, the visit where the clearance had occurred.

12.15 The Council's advocate will make submissions on the law relevant to the assessment of curtilage. Nonetheless, I have applied the law as summarised in paragraph 6.6 of the Council's Statement of Case.

12.16 Approaching the question of the curtilage of the existing bungalow as one of fact and degree, I have had regard to the following factors.

- The statutory consequence of a finding that the area where the unauthorised building and shed are located is within the curtilage of the bungalow.
- The respective sizes of the land in issue and the bungalow.
- Ancillary relationship.
- Physical layout.
- Ownership past and present.
- Use and function, past and present.

12.17 Taking all the above into account, I consider that the curtilage of the bungalow is confined to the area edged in blue on the enforcement notice plan. It follows that there are no permitted development rights attaching to the land edged red that would allow the part constructed outbuilding to be built.

12.18 The position of the shed and building under construction on the land is such of being visually screened to a great degree from the main dwellinghouse.

12.19 There is such a significant separation of the shed and building under construction from the main dwellinghouse that it does not speak to an incidental outbuilding.

12.20 Article 3(5) of the General Permitted Development Order 2015 (as amended), may cause the development to not benefit from express consent, if it were so determined to be Permitted Development insofar of the shed and building under construction to meet the limitations and wording in respect of a Class E

outbuilding.

- 12.21 The extent, purpose and means of connection and utility or other supplementary articles to the building under construction are unknown and should be further interrogated during the inquiry.
- 12.22 The measurements of the shed and building under construction are contained within **Appendices 15a and 15b**, I will not repeat those in summary.
- 12.23 It is noteworthy that the building under construction remains materially incomplete and the ultimate extent of its height, rise, and finished appearance is unknown.
- 12.24 The building under construction currently has an interior height from a “sub-floor”, and external height from ground level that materially differ.
- 12.25 As to the ground (d) appeal, the Appellants say that the land is partly in use as garden/amenity land ancillary to the bungalow. It is not clear if this is an argument over how the use enforced against should be described, or something more fundamental.
- 12.26 The unauthorised change of use occurred when the unauthorised building works began. At that stage the land was not (and could not be) in use as a woodland and was, instead, used for residential purposes.

13.0 THE HIDDEN GROUND (B) APPEAL

- 13.1 In the circumstances of this case, this ground appears to overlap with the ground (d) appeal and I do not intent to repeat the comments I have made above.

14.0 GROUND (A)

14.1 The JLP, in respect of Policy SP03, states:

Outside of the settlement boundaries, development will normally only be permitted where:

a) the site is allocated for development,

The site in question is not and has not been identified or allocated for development.

b) it is in accordance with a made Neighbourhood Plan,

The area of unauthorised operational development is outside the Leavenheath – High Road settlement boundary in the Leavenheath Neighbourhood Plan 2022-2037 (“the LNP”) and there is no policy in the LNP that supports this development.

c) or it is in accordance with one of the policies of this Plan listed in Table 5;

The applicability of exceptions as per Table 5, were identified and explained to the Appellants within the response to their submission for pre-application advice.

14.2 The development in respect of the erection of the shed and building, as well as the unauthorised change of use, does not to the council’s understanding fall under the relevant policies to meet a Table 5 exception.

14.3 It is not a point in contention that Para.80 of the NPPF, but now under Para.84 following amendments to the NPPF, applies regarding the unauthorised development.

14.4 There are some policies which require further consideration to the matters at hand.

14.5 Policy LP02 - Residential Annexes

The building under construction does not accord with nor meet the exceptions in this regard.

14.6 LP03 (1) residential extensions and conversions.

The development, and land subject to the notice, are not understood nor considered to be a residential extension and conversion.

14.7 LP21 (1) change of use of agricultural land to residential garden

This Policy does not permit operational development. The change of use permitted by the policy is from agriculture to residential garden land or land ancillary to a residential dwelling, subject to there being no adverse effect on landscape or biodiversity.

“Agriculture” is defined in section 336(1) of the 1990 Act. It does not include woodland use unless that use is ancillary to the farming of land. Furthermore, the Appellants have provided no evidence of the effect of the change of use on biodiversity.

15.0 HARM TO RESIDENTIAL, NEIGHBOURING AND LOCAL AMENITY

Chapters 12 & 15 of the NPPF give regard to trees and amenity in respect of sustainable development, and sites of biodiversity or geological importance. There is an expectation of protecting the intrinsic character and beauty of the countryside, and minimising impacts on biodiversity.

Outlook is an amenity factor, and that blocking a natural woodland setting harms that amenity, in respect of the amenity and enjoyment of land, including garden. Namely in respect of the neighbouring property (30a) principally affected by the works.

Para 198. Of the NPPF further specifies that new development is ensured to be appropriate for its location and weight is given to this, where mention of need to; mitigate and reduce impact on amenity, identify and protect tranquillity, and to limit the impact of light pollution should be considered.

The removal of trees, and subsequently habitat has occurred.

The woodland and site are considered overall commensurate, and the woodland is designate by the Forestry Commission as a priority habitat. The woodland is considered deciduous and appears overall to host native species of high environmental and biodiversity value.

The site is bordered at almost its entire extent of Western boundary by a Public Right of Way; the building is demonstrably visible and impactful upon the view of those who use this, pictures of the site obtained from this path and supplied in previous appendices support this.

16.0 SUGGESTED CONDITIONS

The overarching reason for the suggested conditions is – To enable the Local Planning Authority to retain control over the development in the interests of the amenity of the locality and to safeguard local distinctiveness.

Whilst some of the conditions have been suggested and therefore accepted by the Appellant's, via their agent, it is accepted that others remain contested and the Appellant's are invited to respond further in points to the Inspector.

17.0 CONCLUSIONS

17.1 The requirements set forth in the notice are commensurate with, and proportionate to, the breach of planning control.

17.2 The development has not been carried out with the benefit of planning permission, by either express or deemed consent.

- 17.3 For the reasons given above, I consider that the curtilage of the existing bungalow at 30 Edies Lane is as shown outlined in blue on the enforcement notice plan.
- 17.4 The unauthorised development has taken place outside the bungalow's curtilage and therefore does not benefit from permitted development rights.
- 17.5 It is agreed that the enforcement notice plan can be amended to exclude land not in the Appellants' ownership. I consider that the description of the alleged breach can also be amended without causing prejudice to the Appellants to include the existing, and undisputed, woodland use.
- 17.6 It has not been shown that the land enforced against has been used for residential purposes for 10 or more years.
- 17.7 The development enforced against is beyond the settlement boundary, contrary to the development plan and harmful to the character and appearance of the area. There are no material considerations that would justify the grant of permission.
- 17.8 Accordingly, I would invite dismissal of the appeal.

LIST OF APPENDICES –

The list and numbering of appendices is a continuation of those provided with the Council's Statement of Case, and Final Comments.

**APP-D3505-C-25-3376611- Appendix 13 - Babergh Local Plan 2006 Proposals Map-
Leavenheath Settlement Boundary**

APP-D3505-C-25-3376611 - Appendix 14a - PLANNING STATEMENT

APP-D3505-C-25-3376611 - Appendix 14b - PROPOSED PLANS AND ELEVATIONS

APP-D3505-C-25-3376611 - Appendix 14c - PROPOSED SITE PLAN ELEVATIONS

APP-D3505-C-25-3376611 - Appendix 14d - SITE LOCATION PLAN

APP-D3505-C-25-3376611 - Appendix 15a Buildings and Site Plan - Officer Visit 27-02-2026

APP-D3505-C-25-3376611- Appendix 15b - Officer Visit Notes - 27-02-2025

APP-D3505-C-25-3376611- Appendix 16a - B-89-01855

APP-D3505-C-25-3376611- Appendix 16b - B-89-01855