

Proof of Evidence (Summary) – 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”.

Site address:

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

March 2026



CONTENTS

- 1.0 Qualifications and Experience
- 2.0 Introduction and Factual Background
- 3.0 Appeal Grounds c) and d)
- 4.0 Hidden Ground b) Appeal
- 5.0 Ground a) Appeal
- 6.0 Conclusions

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.

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, 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.
- 2.2 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.
- 2.3 The majority of the site is located outside the settlement boundary for Leavenheath: 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) and reserved matters approval reference B/90/01219 (part submission of reserved matters).
- 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-

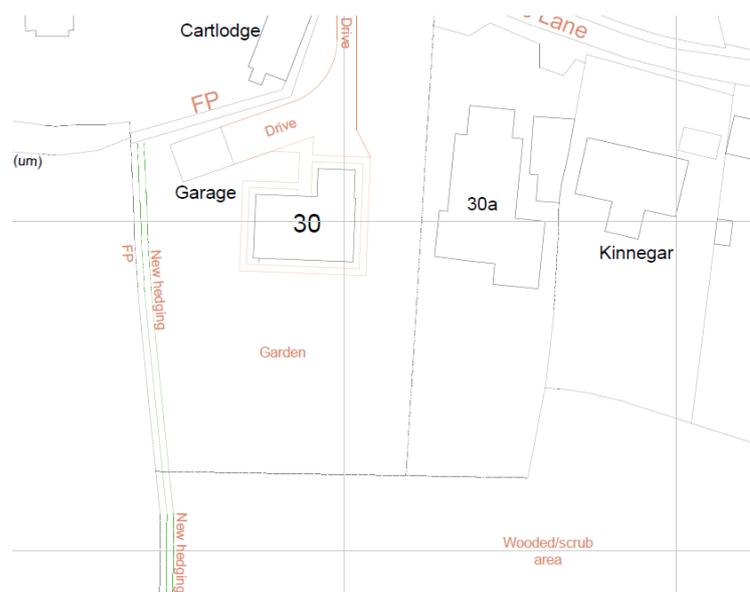
build dwelling to the west of the current dwelling, there is no record of any planning applications for the property between March 1991 and January 2026.

- 2.7 Copies of the decision notices and building control records are with the Council's Statement of Case. 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.
- 2.8 The extent of the land associated with the dwelling granted as garden is shown on the plans at Appendices 4a – 4b with the Council's Statement of Case.
- 2.9 The site has been subject to two planning enforcement investigations. 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.

3.0 APPEAL GROUNDS (C) AND (D)

- 3.1 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.
- 3.2 Land Registry records show that the dwellinghouse and land outlined in blue on the enforcement plan are registered under title number SK110332.
- 3.3 The land to the south of this land (i.e. the land outlined in red on the revised enforcement notice plan) is registered under title number SK1314.

- 3.4 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.
- 3.5 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).”*
- 3.6 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”.
- 3.7 Drawing 1147/A/5 is referred to in the reserved matters approval granted in 1991 and included the landscaping of the site, including a line of conifers across the southern boundary of the plot associated with the new dwelling. Conditions attached to permission B/89/1855 included landscaping, in order to *“protect the visual amenities and character of the area.”*
- 3.8 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.
- 3.9 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:



- 3.10 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 subject to the 1990 permission.
- 3.11 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.
- 3.12 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.
- 3.13 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.
- 3.14 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.

3.15 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.

3.16 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.

3.17 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.

3.18 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.

3.19 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 meet the limitations and wording in respect of a Class E outbuilding.

3.20 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.

- 3.21 The measurements of the shed and building under construction are contained within **Appendices 15a and 15b**, I will not repeat those in summary.
- 3.22 It is noteworthy that the building under construction remains materially incomplete and the ultimate extent of its height, rise, and finished appearance is unknown.
- 3.23 The building under construction currently has an interior height from a “sub-floor” and external height from ground level that materially differ.
- 3.24 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.
- 3.25 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.

4.0 THE HIDDEN GROUND (B) APPEAL

- 4.1 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.

5.0 GROUND (A)

- 5.1 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.

5.2 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.

5.3 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.

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

5.5 **Policy LP02 - Residential Annexes**

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

5.6 **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.

5.7 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.

5.8 Harm to residential, neighbouring and local amenity.

Chapters 12 and 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.

5.9 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.

5.10 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.

5.11 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.

- 5.12 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.

6.0 CONCLUSIONS

- 6.1 The requirements set forth in the notice are commensurate with, and proportionate to, the breach of planning control.
- 6.2 The development has not been carried out with the benefit of planning permission, by either express or deemed consent.
- 6.3 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.
- 6.4 The unauthorised development has taken place outside the bungalow's curtilage and therefore does not benefit from permitted development rights.
- 6.5 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.
- 6.6 It has not been shown that the land enforced against has been used for residential purposes for 10 or more years.
- 6.7 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.
- 6.8 Accordingly, I would invite dismissal of the appeal.