

# STATEMENT OF CASE – ENFORCEMENT

## Babergh District Council

Lead appeal reference: APP/D3505/C/25/3376611

Linked cases: APP/D3505/C/25/3376612

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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

January 2026

## **1.0 INTRODUCTION**

- 1.1 This statement is prepared as the statement of case of Babergh District Council for the appeal lodged under the above references against the Enforcement Notice (“the Notice”) issued on 17th November 2025. The appeals are made by Mr Adam Willis and Mrs Yasemin Willis.

## **2.0 THE SITE**

- 2.1 The site is located on land to the rear of properties fronting the highway ‘Edies Lane’ in the village of Leavenheath. The site comprises land primarily occupied by woodland, bounded to the south, east and west by agricultural fields, with residential properties and their associated gardens to the north. Immediately to the north-west corner of the site is the residential property associated (by ownership) with the land. The site is edged in red on the plan accompanying the Enforcement Notice and the dwellinghouse and its associated curtilage is edged in blue.
- 2.2 A Public Right of Way is located adjacent to the western boundary of the land. The boundary of the Dedham Vale National Landscape is approximately 360 metres to the east of the eastern boundary of the site.
- 2.3 The site is not within a Conservation Area and is not constrained by any other statutory land designation.
- 2.4 The site is located outside the settlement boundary for Leavenheath for the purposes of the Babergh and Mid Suffolk Joint Local Plan, Part 1 (November 2023) (“the JLP”). The majority of the site is outside the Leavenheath – High Road settlement boundary in the Leavenheath Neighbourhood Plan 2022-2037 (“the LNP”).
- 2.5 The location of the site is indicated on the plan accompanying the Enforcement Notice and copies of the Notice and accompanying Plan are provided as Appendix 1a and Appendix 1b.

### 3.0 RELEVANT PLANNING HISTORY

#### 3.1 Planning history pertinent to the appeal site:

B/89/1855	OUTLINE APPLICATION – ERECTION OF 2 DETACHED BUNGALOWS WITH DETACHED GARAGES AND CONSTRUCTION OF JOINT VEHICULAR ACCESS (EXISTING BUNGALOW TO BE DEMOLISHED)	Granted 22.03.1990
B//90/01219	PART SUBMISSION OF DETAILS UNDER OUTLINE PLANNING PERMISSION B/89/1855 - 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	Granted 06.03.1991
DC/25/01762	Appointment on Site and Written Response- Two-storey front & side extensions. Rear single storey extension. Cartlodge to front, storage barn to rear.	Closed 05.06.2025
BC/25/11157/BN	Home Office Outbuilding – Domestic Building Works, Building Control Notification.	August 2025

#### 3.2 Copies of the decision notices and Building Control Record are attached as Appendix 2a – 2d.

## 4.0 PLANNING POLICIES AND GUIDANCE

### 4.1 National Planning Policy Framework (December 2024)

**Para.2:** Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

**Para.60:** Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

**Para.84.** Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential building; or
- e) the design is of exceptional quality, in that it:
  - i. is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
  - ii. would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

**Para 124.** Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land

**Para 131.** The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants,

communities, local planning authorities and other interests throughout the process.

**Para 135.** Planning policies and decisions should ensure that developments:

- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- (d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

**Para.193.** When determining planning applications, local planning authorities should apply the following principles:

- (a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

#### 4.2 Babergh and Mid Suffolk Joint Local Plan, Part 1 (November 2023)

##### **SP03 – The Sustainable Location of New Development**

1. New housing development will come forward through extant planning permissions, allocations in made Neighbourhood Plans, windfall development in accordance with the relevant policies of the Plan or Neighbourhood Plans and any allocations which are made in the forthcoming Part 2 Plan.

2. Settlement boundaries are defined on the Policies Map. These boundaries were established in earlier Local Plans and Core Strategies and have not been reviewed as part of the Plan but are carried forward without change at the present time. The principle of development is established within settlement boundaries in accordance with the relevant policies of this Plan. Outside of the settlement boundaries, development will normally only be permitted where:

- a) the site is allocated for development, or
- b) it is in accordance with a made Neighbourhood Plan, or
- c) it is in accordance with one of the policies of this Plan listed in Table 5; or
- d) it is in accordance with paragraph 80 of the NPPF (2021).

### **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.

2. Where proposals for residential annexes are considered acceptable, planning conditions or obligations will be imposed to limit the occupation for use as an annexe, and to prevent the future use of the annexe as a separate dwelling.

### **Policy LP03 – Residential Extensions and Conversions**

1) Proposals for extensions to existing dwellings or conversions of buildings to ancillary use within the curtilage of residential dwellings will be supported where they:

- a) Incorporate a high standard of design which maintains or enhances the character and appearance of the buildings, street scene and surroundings;
- b) Will not result in over-development of the plot and will retain suitable amenity space. The cumulative effects of a number of extensions or conversions within the plot will be taken into account;
- c) Will not unacceptably affect the amenities of neighbouring occupiers;
- and
- d) Ensure sufficient parking spaces and turning spaces (where required) are retained or provided.

### **Policy LP16 – Biodiversity & Geodiversity**

1) All development must follow the biodiversity mitigation hierarchy.

2) Development must:

- a) Protect designated and, where known, potentially designated sites. Proposed development which is likely to have an adverse impact upon designated and potentially designated sites, or that will result in the loss or deterioration of irreplaceable biodiversity or geological features or habitats (such as ancient woodland and veteran/ancient trees) will not be supported;
- b) Protect and improve sites of geological value and in particular geological sites of international, national and local significance;
- c) Conserve, restore and contribute to the enhancement of biodiversity and geological conservation interests including Priority habitats and species. Enhancement for biodiversity should be commensurate with the scale of development;

- d) Where possible plan positively for the creation, protection, enhancement and management of local networks of biodiversity with wildlife corridors that connect areas. This could include links to existing green infrastructure networks and areas identified by local partnerships for habitat restoration or creation so that these ecological networks will be more resilient to current and future pressures;
- e) Identify and pursue opportunities for securing measurable net gains, equivalent of a minimum 10% increase, for biodiversity. The Councils will seek appropriate resources from developers for monitoring of biodiversity net gain from developments. Where biodiversity assets cannot be retained or enhanced on site, the Councils will support the delivery of net gain in biodiversity off-site;  
and
- f) Apply measures to assist with the recovery of species listed in S41 of the NERC Act 2006.

- 3) Development which would have an adverse impact on species protected by legislation, or subsequent legislation, will not be permitted unless there is no alternative and the LPA is satisfied that suitable measures have been taken to:
  - a. Reduce disturbance to a minimum;
  - b. Maintain the population identified on site; and
  - c. Provide adequate alternative habitats to sustain at least the current levels of population.

- 4) Where appropriate, the LPA will use planning obligations and/or planning conditions to achieve appropriate mitigation and/or compensatory measures and to ensure that any potential harm is kept to a minimum.

#### **LP24 – Design and Residential Amenity**

- 1. All new development must be of high-quality design, with a clear vision as to the positive contribution the development will make to its context. As appropriate to the scale and nature of the development, proposals must:
  - a. Respond to and safeguard the existing character/context;
  - b. Create character and interest;
  - c. Be designed for health, amenity, well-being and safety; and
  - d. Meet Space Standards.
- 2. In order to achieve this development proposals shall:
  - a) Respond to the wider townscape/landscapes and safeguarding the historic assets/ environment and natural and built features of merit;
  - b) Be compatible/harmonious with its location and appropriate in terms of scale, mass, form, siting, design, materials, texture and colour in relation to the surrounding area;
  - c) Protect and retain important natural features including trees or hedgerows during and post construction;

- d) Create/reinforce a strong design to the public realm incorporating visual signatures;
- e) Take account of the Building for a Healthy Life design assessment framework and include good practice in design principles. Non-householder schemes of exceptional design and/or development within a sensitive area/ landscape will be required to undertake a design review to test incorporation of good design principles ;
- f) Incorporate high levels of soft landscaping, trees and public open space that creates, and connects to, green infrastructure and networks;
- g) Prioritise movement by foot, bicycle and public transport, including linkages to create/contribute to a ‘walkable neighbourhood’;
- h) Design-out crime and create an environment for people to feel safe, and has a strong community focus;
- i) Protect the health and amenity of occupiers and surrounding uses by avoiding development that is overlooking, overbearing, results in a loss of daylight, and/or unacceptable levels of light pollution, noise, vibration, odour, emissions and dust, including any other amenity issues;
- j) Provide appropriate long-term design principles and measures in terms of privacy and adequate facilities such as bin storage (including recycling and re-use bins), secure cycle storage and garden space;
- k) Where appropriate demonstrate that the design considers the needs of disabled people and an ageing population and follow Dementia-Friendly Design principles<sup>14</sup>; and
- l) Provide at least 50% of dwellings which meet the requirements for accessible and adaptable dwellings under Part M4(2) of Building Regulations (or any relevant regulation that supersedes and replaces). Where site viability issues exist, proposals must be supported by a viability assessment which convincingly demonstrates what the maximum viable contribution for accessible and adaptable dwellings is.

3. All developments must also demonstrate that they have regard to the design principles set out through Suffolk Design, the Councils’ Design Supplementary Planning Documents, design documents which support Neighbourhood Plans and/or village design statements. Development which fails to maintain and, wherever possible improve, the quality and character of the area will not be supported.

#### 4.3 Leavenheath Neighbourhood Plan (made 27 July 2023):

##### **LEAV1 – Views of Community Importance**

The following views (as shown in figure 13 and 14) are identified as views of community importance:

1. View from Kingsland Lane looking southeast towards Honey Tye.

Development proposals within or which could affect a view of community importance should take account of the view concerned. Developments, which would have an unacceptable adverse impact on the landscape or character of the view concerned, will not be supported.

The scenic beauty, including views into and out of the AONB will also be taken into account with its designation as a nationally important landscape.

### **LEAV3 – Landscape and Biodiversity**

The scenic value of the landscape within the neighbourhood plan area, and outside of the defined settlement boundaries, will be protected from development that would adversely affect its character and value. Sensitive features typical of the Ancient Rolling Farmlands character area, such as woodland, species rich hedgerows, and associated ditches, should be retained and incorporated into the design and layout of new development proposals.

All development proposals should retain existing features of biodiversity value (including trees, hedgerows, grass verges, ponds and drainage ditches).

Development proposals should identify how they will provide a net gain in biodiversity through, for example:

- The creation of new natural habitats.
- The planting of additional native trees and hedgerows, for screening, landscaping and separation purposes.
- Green areas between and on new developments.
- Soft site boundaries to new developments.

### **LEAV6 – Pattern of Growth**

Development should respect and retain the generally open and undeveloped nature of the parish, in particular, the distinct separation of Harrow Street, High Road and Honey Tye (see figure 22). Development in the main is set back from the A134 and this should continue to be respected. Development that would individually or cumulatively undermine the physical or visual separation of the three settlements will not be supported.

### **LEAV9 – Design Principles**

Development proposals that respond positively to creating an attractive parish and enhance each of the settlements' aesthetic qualities (Harrow Street, High Road and Honey Tye) will be encouraged and should be guided by the Leavenheath Design Guidelines and Codes (June 2021) (addendum document).

The Council acknowledges that the Neighbourhood Plan policies set out above were not referred to in the Notice. Notwithstanding, the LNP is part of the

development plan and relevant policies should be taken into account in the ground (a) appeal.

#### 4.4 Babergh and Mid Suffolk Joint Local Planning Enforcement Plan (2023)

We place great importance on using our planning powers to protect and enhance our environment whilst making sure that development improves the economic prosperity and quality of life for all those who live, work and visit our districts.

We recognise that the integrity of, and public confidence in, our planning and enforcement process is built upon our commitment to take effective action against unauthorised development. We will therefore investigate and take proportionate action where we consider that the planning issue causes unacceptable harm to the public interest.

When we assess whether formal action should be taken, we must ensure that our actions are reasonable, proportionate and in the public interest. This is known as the expediency test; it means weighing up carefully the merits of each case before deciding what to do. The question, whether or not it is expedient to act, is at our discretion.

During our investigation we will seek information and may do this by formal or informal means. Once we have sufficient information to reach a conclusion, we will decide whether it is expedient to take enforcement action.

## 5.0 THE COUNCIL'S CASE (INCLUDING COMMENT ON THE APPELLANTS' GROUNDS OF APPEAL STATEMENT).

### 5.1 The Ground (a) Appeal

5.2 The Babergh and Mid Suffolk Joint Local Plan, Part 1 (November 2023) ("the JLP") was adopted by both Councils in November 2023, after being examined by Planning Inspectors (ref. PINS/D3505/429/5) and found to be "positively prepared, justified, effective and consistent with national policy" and, therefore, 'sound'.

5.3 The JLP includes Policy SP03, The Sustainable Location of New Development, which seeks to direct all new development to within existing settlement boundaries aside from where it accords with Table 5 to the policy, which permits development outside of settlement boundaries under specific circumstances.

5.4 In this particular instance, the settlement boundary intersects the wider site, with the dwelling and residential curtilage (edged in blue on the plan accompanying the Notice) within the settlement boundary, and the larger wooded area to the south (edged in red on the plan accompanying the Notice) outside the settlement boundary. As such, the development of the outbuildings on the land edged in red, in terms of the acceptability of the principle of development, is contrary to the JLP and Policy SP03.

5.5 Table 5 to Policy SP03 (labelled "*policies permitting development outside settlement boundaries, subject to the development's accordance with the other relevant policies*") refers to Policy LP02, 'Residential Annexes'. However, the building under construction and the use of the land are considered to be contrary to Policy LP02, 'Residential Annexes', because it is not so designed to be integrated later into the main building as a single dwellinghouse when it is no longer required.

5.6 In February 2025, the Council received a pre-application enquiry from the Appellants, given reference DC/25/00813, for "*Written Response Only - 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 proposed site plan submitted with this enquiry labels the area immediately surrounding the dwellinghouse as "Garden", and the woodland area to the south as "Managed wooded area". A copy of the 'Proposed Site Plan' for pre-application enquiry ref. DC/25/00813 is provided as Appendix 3a.

5.7 The Council's response to this pre-application enquiry advised that the wooded area to the south was outside the settlement boundary and, therefore, in conflict with Policy SP03. Further, the Council advised that "*the large, detached storage building is unacceptable given where it lies in relation to the settlement boundary*

*and that it is not supported by a Table 5 policy*". In addition, the Council also advised that *"the red line plan submitted appears to encompass a significantly large area of woodland south of the property which is not garden land. Any development in this area would also require a change of use of land, which is unlikely to be granted"*. A copy of the response to pre-application enquiry ref. DC/25/00813, dated 5th March 2025, is provided as Appendix 2c.

- 5.8 On 1st July 2025, the Council's Planning Enforcement team received a report of concern relating to the unauthorised change of use of the wooded land to the south of No.30 Edies Lane (the Appellant's property) to 'domestic garden curtilage'. This report was recorded under Planning Enforcement investigation ref. EN/25/00366. A site visit by the Council's Enforcement Officer was conducted on 2nd July 2025.
- 5.9 During the site visit of 2nd July, the Appellants advised that the works within the wooded area to the south of the dwellinghouse and its associated curtilage amounted to clearance of brush and scrub vegetation, and did not involve any works to the trees. The Enforcement Officer advised that if the clearance of the land (of brush and scrub, etc) and removal of any trees was to allow for further works which require planning permission, that they may need to apply – not only for any structures or buildings that they may build, but also for any change of use of land, e.g. from woodland or agricultural to garden/residential.
- 5.10 The Council's Enforcement Officer further advised on the matter of 'curtilage' and where certain permitted development rights may apply, and suggested that if they did want to undertake any development including changes of use that they may want to seek professional advice before proceeding further. The Appellants advised that they were just undertaking clearance of scrub and brush and dangerous tree branches, etc. and they were not planning on building any buildings or structures.
- 5.11 Satisfied that the works observed on site during the site visit of 2nd July did not require planning permission, or amount to a breach of planning control, the Enforcement Officer concluded and closed investigation ref. EN/25/00366 on 21st July 2025. Contemporaneous notes made following the site visit of 2nd July 2025 are provided as Appendix 6a. The Case Closure Memo prepared for the conclusion of Planning Enforcement investigation ref. EN/25/00366 is provided as Appendix 6b.
- 5.12 In October 2025, the Council received a report that the development subject to the Notice was being constructed without the benefit of planning permission. The investigation of the report concluded that planning permission would be required because the development was outside the curtilage of the dwellinghouse, and an application would be unlikely to be granted because the proposal would be contrary to JLP Policy SP03. The Enforcement Officer advised the Appellant, on 15th October 2025 and 13th November 2025 via correspondence, of the above

conclusions – essentially the same advice as had been provided by the Council in the pre-application enquiry response dated March 2025, and paid for by the Appellant.

- 5.13 The Council's Planning Enforcement Officer conducted a visit to the site on 3rd October 2025 which confirmed the construction of the outbuildings had commenced in the location as indicated (with an "X") on the red line plan accompanying the Enforcement Notice. Copies of photographs taken during the site visit of 3rd October are provided as Appendix 6c. Copies of photographs taken during service of the Enforcement Notice at the property on 17th November 2025 are provided as Appendix 6d (rear garden of the dwelling) and Appendix 6e (outbuilding and shed on adjacent land). In addition, a copy of the plan submitted with the Appellant's Building Regulations application ref. BC/25/11157/BN is provided as Appendix 2e.
- 5.14 Having regard to the area of land considered to constitute the actual curtilage of the dwellinghouse, No.30 Edies Lane, and the extent of the wooded area associated (by ownership) with the property, the Council considers the location chosen for the erection of the unauthorised outbuildings to be, arguably, the most harmful in Planning terms – i.e. immediately adjacent to and along the boundary of the neighbouring residential property.
- 5.15 The outbuildings, being located as they are, are considered to give rise to a loss of outlook and, therefore, residential amenity for the neighbouring dwelling, as well as potentially a loss of privacy, possibly through overlooking – depending on the final layout of the outbuildings and the orientation of fenestration.
- 5.16 The Council considers the development of the outbuildings to conflict with Policy SP03 of the JLP, by virtue of being located outside the settlement boundary for Leavenheath. Further, the development is considered to conflict with Policy LP02 on the basis that as a residential annex it could not be readily integrated into the main dwelling when no longer required, as well as conflict with Policy LP03 by way of being an ancillary building which would unacceptably affect the amenity of neighbouring occupiers.
- 5.17 Further, the Council is concerned that the development of the outbuildings conflicts with JLP Policy LP16, particularly in relation to 2c) for the conservation, restoration and contribution to the enhancement of biodiversity and geological conservation interests, and 2e) for the identification and pursuit of securing measurable net gains. As an application for planning permission has not been submitted for the development of the outbuildings on the site, the Council has not been provided with any information on the matters of biodiversity conservation or enhancement such that it can be satisfied the development would be in accordance with this policy.

- 5.18 In addition, the Council is concerned that the development of the outbuildings conflicts with JLP Policy LP24, particularly with regard to 2b) for compatibility with the location, 2c) for the protection and retention of natural features, and 2i) for the protection of the health and amenity of occupiers and surrounding users. As an application for planning permission has not been submitted for the development of the outbuildings on the site, the Council has not been provided with any information on the matters of compatibility with neighbouring uses, protection and/or retention of natural features, or mitigations for protection of local amenity such that it can be satisfied the development would be in accordance with this policy.
- 5.19 The Council also considers the development of the outbuildings to be in conflict with the policies of the Leavenheath Neighbourhood Plan, including LEAV1 as there may be an adverse impact on the important community view from Kingland Lane; LEAV3, as there may be adverse effect on the value of sensitive features including woodland, as well as through adverse effects on the biodiversity value of those features; and, LEAV6 and LEAV9, in terms of the location of development and design quality, respectively.
- 5.20 The Appellant asserts, by virtue of citing ground (a) in the appeal, that the development should be granted planning permission. However, the Council has refuted this claim by demonstrating that the development is inappropriate and does not accord with planning policy contained within the development plan. In addition, the development does not accord with the requirements of the National Planning Policy Framework (“the Framework”) as it does not provide the good design required to create better place and make the development acceptable to the local community (para.131), and is not sympathetic to local character or the surrounding built environment (para.135). Overall, the development is considered to have an adverse impact on the amenities of neighbouring properties, contrary to the aforementioned policies.
- 5.21 The development of the outbuildings should not be granted planning permission, for the reasons outlined.

## 6.0 The Ground (c) Appeal

- 6.1 Planning permission has not been expressly granted by the Council, in its capacity as Local Planning Authority, for the development of the outbuildings on the land. The development of the outbuildings on the land does not benefit from any of the provisions contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the Order”) and, therefore, planning permission is not deemed to be granted by the Order.

- 6.2 Section 55(1) of the Town and Country Planning Act 1990 (as amended) (“the Act”) states that “development” means “*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*”. The erection of the outbuildings on the land constitutes a building operation which amounts to “development” as defined by the Act.
- 6.3 Section 57(1) of the Act states that “*planning permission is required for the carrying out of any development of land*”. Section 58(1) sets out the various means by which planning permission may be granted, including “(a) *by a development order*” and “(b) *by the local planning authority*”. The development of the outbuildings subject to the Notice has not been granted planning permission by either of these means, or any other means.
- 6.4 Section 171A of the Act states that “*For the purposes of this Act— (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control*”.
- 6.5 No planning permission has been expressly granted by the Council, in its capacity as Local Planning Authority, for the erection of the outbuildings because no application for permission has been made to the Council. As a consequence, the development is unauthorised – on that basis it constitutes a breach of planning control.
- 6.6 No planning permission has been deemed to be granted by the Order because the location of the outbuildings is outside the curtilage of the dwellinghouse. For this purpose, the curtilage of a building is land that is so intimately connected with the building as to lead to the conclusion that the land forms part and parcel of the building. If land is within the curtilage of a building the relationship of the land to the building would be sufficiently proximate that a reference to the building could be treated, without artifice, as including the land as well: *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2022] QB 103. The extent of the curtilage of a building is a question of fact and degree, having regard to relevant considerations including the statutory consequences of a finding that the land falls within the curtilage of the building, the respective sizes of the land and the building, and whether the land is ancillary to the building. Other significant factors are (a) physical layout, (b) ownership past and present, and (c) the use or function of the land or building, past and present. A copy of the Hampshire judgement is provided as Appendix 7a.
- 6.7 Planning permission was first granted for the residential use of the land under planning permission ref. B//89/01855, for “*Outline – erection of 2 detached bungalows with detached garages and construction of joint vehicular access (existing bungalow to be demolished) improvements to Edies Lane including*

*provision of a vehicle turning area”, with Reserved Matters subsequently submitted under application ref. B//90/01219, for “Part submission of details under Outline planning permission B/89/1855 – 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”.*

- 6.8 Copies of the site plans for Outline planning permission ref. B//89/1855 and the subsequent Reserved Matters application ref. B//90/01219 are provided as Appendix 4a and Appendix 4b, respectively. The Council contends that it is apparent from these plans that the land area subject to planning permission for residential development was confined to the area immediately surrounding the proposed dwelling, and it is therefore this area only that constitutes the “curtilage” of the dwellinghouse. Subsequent aerial photographs indicate that this has not changed. Aerial photographs of the site for the period 2000 to 2025 are provided as Appendix 4c.
- 6.9 The Appellants acquired their residential property and the land to the south in September 2024. The relevant Land Registry title records and plans for SK110332 are provided at Appendix 4d and 4e, and for SK1314 are provided at Appendix 4f and 4g. Further, marketing materials for the property, available on the Rightmove website, are provided at Appendix 4h.
- 6.10 Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) refers to “*Development within the curtilage of a dwellinghouse*”. Class E of Part 1 of Schedule 2 refers to “*buildings etc incidental to the enjoyment of a dwellinghouse*” and provides, as ‘permitted development’, for “*the provision within the curtilage of the dwellinghouse of – (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas*”.
- 6.11 There is no need to establish whether or not the outbuildings subject to the Notice accord with the criteria set out in E.1, E.2, or E.3, or indeed the Interpretation under E.4. In the Council’s view the outbuildings are not “within the curtilage” of the dwellinghouse and, thus, no deemed planning permission is afforded by the Order.
- 6.12 No planning permission has been expressly granted by the Council, in its capacity as Local Planning Authority, and no planning permission has been deemed to be granted by the Order. The erection of the outbuildings constitutes ‘development’ as defined by Section 55 of the Act, and requires planning permission as stipulated by Section 57 of the Act. As the outbuildings are development and do not benefit

from planning permission, their erection constitutes a breach of planning control as set out in Section 171A of the Act.

## 7.0 The Ground (d) Appeal

- 7.1 The matters stated in the Notice are “*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*”.
- 7.2 The Appellant states that the land on which the outbuildings subject to the Notice have been erected has an established, and therefore lawful, use as “garden land” and, therefore, “no enforcement action could be taken in respect of **any** breach of planning control” (emphasis added). The Appellant contends that this immunity is conferred by Section 171B(2)(a) of the Act – for “change of use of any building to use as a single dwellinghouse”.
- 7.3 The Council contends that the land edged in red on the plan accompanying the Notice has not been subject to a change of use to a single dwellinghouse and, therefore, Section 171B(2)(a) is not relevant. If the land has been subject to a change of use to “garden land”, and that change occurred more than ten years ago and has been continuous throughout the intervening period, it may be afforded immunity from enforcement action – against that specific change – under Section 171B(3) of the Act.
- 7.4 Further, the Council contends that even if the land within the red line accompanying the Notice has been used as “garden land” for a period in excess of ten years, and that unauthorised change of use has been rendered immune from enforcement action through the passage of time, the land would not accrue any ‘permitted development’ rights under Part 1 of the Order. Even if the land within the red line accompanying the Notice is immune from enforcement action for the unauthorised change of use to “garden land”, the land does not become part of the curtilage of the dwellinghouse.
- 7.5 It is the Council’s position that the relevant immunity period for the erection of the outbuildings would be that provided by Section 171B(1)(a) of the Act – for the “*carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land*” – subject to a period of ten years “*beginning with the date on which the operations were substantially completed*”.
- 7.6 The Council served on the Appellants a Planning Contravention Notice (“PCN”) on 9th October 2025 and asked, at question (k), when the works for the erection

of the outbuildings commenced. The response to the PCN, received on 16th October 2025, advised in response to question (k) that works to erect the outbuildings had commenced “Approx. 1 month ago”. A copy of the PCN is provided as Appendix 5a, and copies of the response and covering letter are provided as Appendix 5b and Appendix 5c, respectively.

- 7.7 As the land on which the outbuildings subject to the Enforcement Notice are located does not form part of the curtilage of the dwellinghouse and, therefore, does not benefit from the ‘permitted development’ rights conferred by Class A of Part 1 of Schedule 2 of the Order, and the erection of the outbuildings commenced only a few months prior to the Enforcement Notice being issued and served, the Council contends that the date the Notice was issued was well within the ten year period for immunity provided under Section 171B(1)(a), notwithstanding that the immunity period would not have actually started in any event given that the outbuildings had not, at the time the Notice was issued and served, been substantially completed.
- 7.8 With regard to the use of the land, the Notice is directed at the unauthorised material change in the use of the land edged in red on the plan accompanying the Notice to a use for residential purposes, borne out of the erection of the outbuildings, originally (as stated on plans accompanying a submission under Building Regulations, ref. BC/25/11157/BN) for use as a “home office”, and latterly (according to the PCN response) for a use as “ancillary domestic” (answer to question (r), see Appendix 5b).
- 7.9 Even if, as the Appellant states, the land edged in red on the plan accompanying the Notice has been used as “garden land” for a period in excess of ten years at the date the Notice was issued and served, any immunity from enforcement action (if any immunity was proven to be applicable) would not confer upon the land a ‘residential’ use. The use of land as “garden” would – in an ordinary or common meaning – lead to an understanding of being incidental or ancillary to a residential use. From there, it is logical and reasonable to conclude that land, in of itself, cannot have a residential use – it requires a building or some other structure for the use to be ‘residential’.
- 7.10 That being the case, the Council contends that residential use of land can only occur through the occupation of a building, situated on the land, for an actual or ancillary residential purpose. The descriptions attributed to the use of the outbuildings – originally “home office” and, latterly, “ancillary domestic” – convey an intent to utilise the outbuildings in a manner ancillary to the main residential dwellinghouse.
- 7.11 The Council contends that the unauthorised material change of use of the land edged in red on the plan accompanying the Notice occurred on the date the unauthorised development of the outbuildings commenced – as per the terms of

Section 171B(3) of the Act. That being the case, with the commencement of the development of the outbuildings occurring only a few months prior to the Enforcement Notice being issued and served, the Council contends that the date the Notice was issued was well within the ten year period for immunity provided under Section 171B(3).

- 7.12 In summary, the Notice was issued and served against the operational development involving the erection of the outbuildings within ten years of the date those works were first commenced. The operational development was not immune from enforcement action under the terms of Section 171B(1)(a) of the Act.
- 7.13 Further, the Notice was issued and served against the material change in the use of the land arising from the ancillary residential use of the outbuildings within ten years of the date that use was first commenced. The material change of use of the land was not immune from enforcement action under the terms of Section 171B(3) of the Act.

## **8.0 CONCLUSIONS**

- 8.1 Planning permission has not been granted, either by express consent from the Local Planning Authority, or by deemed consent via the 'permitted development' Order, for the erection of the outbuildings, or the change of use of the land to residential, for the land edged in red on the plan accompanying the Notice.
- 8.2 The development carried out does not accord with either National or Local planning policy and gives rise to unacceptable harm to local and residential amenity.
- 8.3 The Council therefore contends that it is expedient to remedy the breach of planning control involving the unauthorised development of the outbuildings and change of use of the land by way of an Enforcement Notice requiring the removal of those outbuildings and the cessation in the residential use of the land.
- 8.4 The Council also contends that the requirements of the Notice, and the timescales given for compliance, are both reasonable and appropriate to remedy the breach of planning control and the harm to amenity.
- 8.5 The Inspector is therefore respectfully requested to dismiss the appeal and confirm the Enforcement Notice.

## **APPENDICES**

Appendix 1a. Enforcement Notice

Appendix 1b. Enforcement Notice Red Line Plan

Appendix 2a. Copy of Decision Notice for Outline Planning Permission ref. B/89/1855

Appendix 2b. Copy of Decision Notice for Reserved Matters ref. B/90/1219

Appendix 2c. Pre-Application Response Report, ref. DC/25/00813

Appendix 2d. Building Regulations application form, ref. BC/25/11157/BN

Appendix 2e. Building Regulations application plan, ref. BC/25/11157/BN

Appendix 3a. Pre-Application ref. DC/25/00813 Proposed Site Plan

Appendix 4a. Outline Planning Permission ref. B/89/1855 Red Line Plan

Appendix 4b. Reserved Matters application ref. B/90/1210 Red Line Plan

Appendix 4c. Aerial Photographs for 2000 to 2025

Appendix 4d. HMLR Register of Title, ref. SK110332

Appendix 4e. HMLR Title Plan, ref. SK110332

Appendix 4f. HMLR Register of Title, ref. SK1314

Appendix 4g. HMLR Title Plan, ref. SK1314

Appendix 4h. Property Sale Materials (Rightmove.co.uk)

Appendix 5a. Planning Contravention Notice document

Appendix 5b. Planning Contravention Notice response

Appendix 5c. Planning Contravention Notice response covering letter

Appendix 6a. Contemporaneous notes from Enforcement site visit of 2nd July 2025

Appendix 6b. Planning Enforcement investigation Case Closure Memo, EN/25/00366

Appendix 6c. Site Visit Photographs – 30th October 2025

Appendix 6d. EN Service Photograph, Rear Garden – 17th November 2025

Appendix 6e. EN Service Photograph, Outbuilding & Shed – 17th November 2025

Appendix 7a. Hampshire CC v Blackbushe [2022] Q.B.103