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TOWN AND COUNTRY PLANNING ACT 1990

SECTION 174

APPEAL BY MR & MRS WILLIS

30 EDIES LANE, LEAVENHEATH, SUFFOLK, CO6 4PA.

APPEAL STATEMENT

REVISED 22 JANUARY 2026

Ref: 3418
December 2025

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Town and Country Planning Act 1990 (as amended)

Appeal by Mr & Mrs Willis

30 Edies Lane, Leavenheath, Suffolk, CO6 4PA

Introduction

1. My name is Philip Cobbold, I am managing director of Phil Cobbold Planning Ltd. I am a Chartered Town Planner with 39 years' experience in planning and development. I have a BA(Hons) and Post Graduate Diploma in Town Planning. I have been a member of the Royal Town Planning Institute since 2005. I have worked in the local government and the private sector. I have run my own Planning Consultancy business since 2009.

2. I have been instructed by Mr Adam Willis and Mrs Yasemin Willis ("the Appellants") to produce this Statement in support of their Appeal pursuant to Section 174 of the Town and Country Planning Act 1990 (as amended).

3. The Appeal is made in response to the decision by Babergh District Council ("the LPA") to serve an Enforcement Notice dated 17 November 2025 ("the EN") alleging "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. 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."

4. The EN thus comprises two allegations, namely of an unauthorised building and an unauthorised use.

5. The Appeal is made on the following grounds:

   Ground (a): That in respect of any breaches of planning control which may be constituted by the matters stated in the notice, planning permission ought to be

granted.

Ground (c) that those matters (if they occurred) do not constitute a breach of planning control;

Ground (d) that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

6. In accordance with the letter of 11 December 2025, these grounds of appeal have been updated – with all changes shown in red text, with additions in red text only and any deletions shown in red strikethrough test (i.e. like ~~this~~).

The Appeal Site and its surroundings

7. The Appeal Site (the area shown edged red on the Enforcement Notice) is located to the rear of the Appellant's dwelling. It is not prominent in the streetscene nor readily visible from Edies Lane. The Appeal Site is visible from the public footpath which runs along the western boundary of the Appellants' garden.

8. The Appeal Site is formally comprised within registered title SK1314 but occupied contemporaneously by the Appellants as part of the dwellinghouse known as 30 Edies Lane (registered title SK110332)('the Dwelling'). Copies of the official register of title and registered title plan for the Appeal Site and the Dwelling are at Appendices 10 and 11 respectively.

9. It is noted that the Appeal Site was previously part of a larger, single title, from which there have been four (4) transfers of part, namely to include the Dwelling but also land associated with/connected to the three residential dwellings immediately to the east 9and each on the south side of Edies Lane).

10. The Appellants purchased the Appeal Site and the Dwelling together/contemporaneously. Such is confirmed by section B of the registers of title but

also the Particulars of Sale at Appendix 12. The particulars of sale include the following text:

> *"…*
>
> *Outside*
>
> *The property is set back from Edies Lane with a white metal gate and shingle drive leading to the bungalow and the detached double garage 25'2" by 18'8" with two up and over doors, power and light connected, and eaves storage above. At the front of the bungalow is an attractive flower bed whilst lawns extend down the side.*
>
> *To the rear is a pathway with shrub border leading out onto the lawns. Beyond that, the land opens behind the neighbouring properties and becomes woodland where there is an open store measuring 30'10" by 16'8". The woodland consists of a variety of trees of differing age and species. Along the western boundary is a public footpath which in the far corner leads out into fields. We also understand that in the south eastern corner of the land is a badger sett. In total the grounds extend to 4.577 acres."*

11. A reference to "the Property" is to the Dwelling and Appeal Site together.

12. The building is located adjacent to the common boundary with the neighbouring property known as Broadley (30A). When viewed from the public footpath the building is seen against a backdrop of existing landscape features; it does not appear as a prominent or intrusive feature.

13. The Appeal Site is not within a Conservation Area, Special Landscape Area, National Landscape (AONB) or any other area of special area designation. The only designated heritage asset is the property known as Stonicott which is a grade II listed building located 60m to the North. It is separated from the Appeal Site by other properties and landscape features. The Appeal Site does not impact upon the setting of the listed

building.

14. Furthermore, the Appeal Site is not within any of the 'Views of Community importance' identified in the Neighbourhood Plan.

General Points applicable to Grounds C and D appeals

15. The Appeal Site is a larger area of land to the rear of the Dwelling. The Appellants say that the Appeal Site can be split into two distinct parts – namely:

15.1 the northern ~1/3rd of the Appeal Site which is currently being used as garden land and has the building on it; and

15.2 the southern ~2/3rds of the Appeal Site which has an established/mature woodland /wooded area on it.

16. These two distinct areas are shown in hatched red and hatched black on the plan at Appendix 13.

17. The hatched red land shall hereafter be referred to as "the Garden/Amenity Land" and the hatched black land referred to "the Woodland".

18. The Appellants concede that they have not made a 'ground (e) appeal'. However, section 176(1) Town and Country Planning Act 1990 (as amended) prescribes that:

> *"(1)On an appeal under section 174 the Secretary of State may—*
>
> *(a) correct any defect, error or misdescription in the enforcement notice; or*
>
> *(b) vary the terms of the enforcement notice,*
>
> *if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority."*

19. The Appellants invite the Inspector to exercise this power for the following, non-

exhaustive reasons:

19.1 The EN allege and unauthorised use and/or building on the Appeal Site – however there is no such evidence of either being applicable in respect of the Woodland;

19.2 It is unjust/unreasonable for the EN to bind land in respect of which there is no unauthorised use. Further, including more land than is reasonable unfairly prejudices the relevant landowner(s) or developer(s).

19.3 If the Appellants' ground (d) appeal is allowed then there is risk of confusion as to the extent of the lawful/now confirmed as immune from enforcement action use of land – namely, would that extend to the whole of the redline of the plan to the EN as currently drawn?

19.4 If the Appellants' ground (a) appeal is allowed, would this change the status of the whole area so that all may be used as garden/amenity land (i.e. to include the Woodland)?

19.5 There is nothing to suggest that the s176 power is limited only in circumstances whereby an Appellant makes an appeal under grounds (f) or (g) – but rather that the s176 power affords a wide discretion to the Inspector to decide whether (or not) to correct or vary an enforcement notice in each and every appeal and regardless of which prescribed ground of appeal has (or has not) been made. Such is a commonsense provision almost certainly designed to facilitate reasonable outcomes in all cases of planning appeals – pertinently to ensure that an enforcement notice is clear on its face as to what is the alleged breach and what its recipient is asked to do (to include what case it needs to respond to at appeal) and reasonable in all other respects (i.e. binds only that land which is the subject of the alleged unauthorised development).

19.6 The exercise of the s176 power is subject to the Inspector's discretion but only in

circumstances where no injustice will arise in invoking it. In this respect:

19.6.1 The EN as understood concerns the Council's concerns as to a prevailing unauthorised use and building – the Council would not be prejudiced by the variation/correction of the EN to remove the Woodland from the breach(es) as alleged. Indeed, the Council could be prejudiced in circumstances whereby a successful appeal unintentionally changes the planning status of the whole of the Appeal Site (i.e. to include the Woodland); and

19.6.2 It is unfair for the entirety of the Appeal Site to the subject to the EN in circumstances where the alleged breach(es) are limited only to a section of that land/title. The Appellants would not be prejudiced by an amendment etc now.

20. The Appellants say that the Inspector should exercise the s176 power by amending the plan to the EN so that its plan/the red line is limited solely to the Garden/Amenity Land. Doing so at the earliest opportunity will narrow issues between the parties and facilitate effective use of Inspector/Inquiry time.

Appeal on Ground C (in part)

21. This Appeal having been listed for an Inquiry, the Appellants assert that their appeal on ground (c) should be considered and/or determined after their ground (d) appeal.

22. The Appellants wish to make plain that their appeal on ground (c) concerns only the building upon the Appeal Site (i.e. this ground (c) appeal is not in respect of/against the alleged unauthorised use – for which see the Appellants' ground (d) appeal – nor the Woodland).

23. The Appellants therefore concede that the building/shed has not existed for such time as to obtain immunity from enforcement action/lawfulness by passage of time. But they

say that it is lawful nonetheless.

24. It is the Appellants' case that the building is situated on land which forms part of the curtilage of the Appellants' dwellinghouse. The Appellants say that 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). The Appellants thus invite the Inspector to allow their ground (c) appeal(s).

25. Included at Appendices 1 to 3 are Witness Statements from local/neighbouring residents. The Inspector will note that the plans which accompany the Statements do not relate to the whole of the red line area on the Enforcement Notice plan but does include the area upon which the building has been erected.

26. The Statements from Mr and Mrs Hore confirms that they have known the area of land (i.e. the Garden/Amenity Land) upon which the building has been erected being used as garden in connection with the Dwelling for a period of 44 years.

27. Mr Steele's Statement confirms that he has known the area of land upon which the building has been erected (i.e. the Garden/Amenity Land) being used as garden in connection with the Dwelling since March 2016.

28. It is also of relevance that in purchasing the Property the Appellants understood it to comprise of a wooded area to the south (i.e. the Woodland) with the balance being a residential dwelling and its garden/curtilage (i.e. The Dwelling and the Garden/Amenity Land).

29. Included at Appendix 4 is a copy of the Appellants' letter dated 16 October 2025 which was sent to the LPA as a covering letter with their answers to the Planning Contravention Notice (PCN). Included at Appendices 5, 6 and 7 are Google Aerial Views of the Appeal Site from 2005, 2015 and 2022. The Appellants' letter provides information relating to the historic use of the land and explains how the land meets the relevant tests for what constitutes curtilage. The photographs clearly show the area

where the building has been erected as being maintained garden area for a period of more than 20 years.

30. For context, copies of the PCN and the responses thereto are attached at Appendix 14. The "WhatsApp" message/screengrab referred to in the Appellants' letter (Appendix 4) is now produced at Appendix 15.

31. It is unclear why the LPA have concluded that part of the Appeal Site was not within the garden curtilage/curtilage to the Dwelling, it seems that they may have made assumptions on the basis of the absence of a planning permission rather than investigating the facts, to include the PCN responses (Appendix 14) and its cover letter (Appendix 4).

32. Included at Appendix 8 are the Appellants' sketch drawings of the building as intended for completion. The Inspector will note that the dimensions of the structure do not fall foul of Parts E.1, E.2 or E.3 of Class E.

33. In summary, the Garden/Amenity Land ~~northern section of the Appeal Site (the area shown edged red on the Witness Statements)~~ is part of the ~~garden~~ curtilage of the Dwelling and has been for many years. The operations relating to the provision of the building came a long time after the Garden/Amenity Land became immune/lawful by passage of time. Therefore the erection of the building is a form of permitted development.

Appeal on Ground ~~E~~D (in part)

34. For the avoidance of doubt, the Appellants' ground (d) appeal does not apply to:

34.1 The "building operations" allegation contained within the EN (i.e. the Appellants say that such is lawful as a form of permitted development – see above); nor

34.2 The Woodland outright.

35. As the part of the Appeal Site upon which the building is situated – i.e. the Garden/Amenity Land - 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 1190 (As Amended).

36. The Appellants rely on the matters aforesaid, notably the statements of Mr and Mrs Hore and Mr Steele.

37. Therefore, in respect of the Garden/Amenity Land ~~land shown edged red on the plans accompanying the Witness Statements~~, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control. The Appellants says that the lawful use of the Garden/Amenity Land, and the planning unit and extent of the residential curtilage, is referable in turn.

38. In circumstances whereby the Appellants' ground (d) appeal is not allowed in respect of the Garden/Amenity Land ~~With regards to the land within the red line of the Enforcement Notice which extends beyond the red line area of the plans accompanying the Witness Statements~~, the Appellants consider that planning permission should be granted as explained in the following paragraphs relating to the Ground A Appeal.

Appeal on Ground A

39. Again, the Appellants' appeal is limited to the Garden/Amenity Land (i.e. excludes the Woodland).

40. ~~The Appellants Appeal on Ground A.~~ Of course, if the Inspector agrees with/allows the Appeal on Grounds C and/or D, then this ground of appeal does not need to be determined.

41. Notwithstanding the above, the Appellants consider that planning permission should

be granted for the development.

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (As Amended) requires planning decisions to be made in accordance with development plan unless material considerations indicate otherwise.

43. In this case, the development plan consists of the Joint Babergh and Mid Suffolk Local Plan Part 1 (adopted 2023) and the Leavenheath Neighbourhood Plan (adopted 2023). The National Planning Policy Framework (NPPF) is a material consideration.

44. Another material consideration in this case will be the Inspector's findings in respect of the Appellants' ground (c) and (d) appeals. Namely, in circumstances whereby the Inspector finds that the Garden/Amenity Land has acquired a lawful use, but is not within the curtilage to the Dwelling (i.e. allows the ground (d) appeal but not the ground (c) appeal) the lawful use of the land will be "ancillary residential" in respect of which it would acceptable, if not expected, for such lands to have sheds, structure (i.e. pergolas, patios etc) thereon.

45. There are no policies in the Joint Babergh and Mid Suffolk Local Plan (JBMSLP) which deal specifically with applications for the construction of domestic outbuildings.

46. The Enforcement Notices alleges conflict with policies SP03 and LP02.

47. Policy SP03 of the JBMSLP is a 'Strategic' Policy that sets out the Council's overarching policy for the 'sustainable location of new development'.

48. The first paragraph of policy SP03 deals with new housing development and so is not relevant to this proposal. The second part of the policy refers to all other forms of development. Policy SP03 is at Appendix 9.

49. In this case, the development is outside of the settlement boundary and therefore for planning policy purposes it is considered to be in the countryside. Furthermore, the

proposal does not fall within category a), b), c) or d). The fact that criteria d) of the policy refers to Paragraph 80 of the NPPF (2021) (now paragraph 84 of NPPF 2024) reinforces the assumption that SP03 is aimed at new housing development.

50. Nevertheless, the inclusion of the word 'normally' within the final sentence of part 2 of the policy, is a clear acknowledgment by the LPA that there will be other circumstances where development in the countryside is reasonable, necessary and justified.

51. Furthermore, it is clear from the preceding text to the strategic policy that it is not aimed primarily at minor developments such as this proposal.

52. The NPPF does not, and never has, restricted development in the countryside in the same manner as the LPA's Policy SP03.

53. The first paragraph of part 3 of the Enforcement Notice alleges that the development is contrary to policy because the site is in the countryside. This suggests that the LPA's policy objective is to prevent residents in the countryside from having any outbuildings, garages or glasshouses. It is unclear why the LPA discriminates between residents who live within a settlement boundary and those who live in the countryside.

54. Policy LP02 is concerned with residential annexes and is reproduced at Appendix 9.

55. The building which has been partly constructed on site is not a residential annexe. Its purpose is not to provide residential accommodation for other family members; it is to be used as a home office and playroom for the Appellant's children and as a store for garden equipment and cycles. These uses are clearly incidental/ancillary to the Dwelling. There is no need for the building to be capable of being integrated into the main dwelling at a later date, when the Appellants' children outgrow the playroom, it will be used for ancillary storage, as a garden shed.

56. The EN ~~Enforcement Notice~~ alleges that the building (and the use of the land) results in "unacceptable harm to the character and nature of the surrounding area and give rise to harm to neighbouring residential amenity". It is difficult to understand how or why the building introduces harm when it is of domestic scale and is located within the domestic curtilage of the dwelling (or certainly within the applicable planning unit). The building is in close proximity to other residential outbuildings (see Appendices 5 to 7 inclusive) and is referable in turn.

57. Furthermore, the Appellants dispute the allegation that the building causes harm to neighbouring residential amenity. The building would have no material impact on the amount of daylight or sunlight to the neighbouring property and nor would it adversely effect the outlook from the property. It is acknowledged that the building will be visible from the neighbours' garden, but just because something is visible doesn't mean it is harmful. It is a long-established principle of planning law that no one has a right to a view.

58. As to the use, regardless of how long-established, the use is clearly a "low key" or "low impact" use adjunct to neighbouring garden/residential amenity uses. The use of the Garden/Amenity Land is not alien or incongruous. Insofar as there may be concerns about the proliferation of additional outbuildings if the Garden/Amenity Land is confirmed as having a lawful C3 use, or within a C3 planning unit/curtilage, that concern can be addressed by the suitable imposition of planning conditions (i.e. to remove the benefit of prescribed permitted development rights).

59. The fact is that neither the Joint Local Plan nor the Leavenheath Neighbourhood Plan contain any policies relating to the erection of domestic outbuildings. Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. It states at part (d) that, for decision making, the presumption in favour of sustainable development means "where there are no relevant development plan policies, or the

policies which are most important for determining the application are out-of-date, granting permission unless:

(i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

60. In this case the building does not affect any areas or assets of particular importance. Furthermore, there would be no impacts arising from the development which would significantly and demonstrably outweigh the benefits which the building will provide to the Appellants. Consequently, permission for the building should be granted in accordance with the presumption in favour of sustainable development.

61. The EN ~~Enforcement Notice~~ does not refer to any policies relating to the use of the land. The LPA has alleged an "unauthorised material change of use of the land for residential purposes" but has not said what the current use has changed from.

62. The Appellants assume that the LPA have accepted that the land was not in agricultural use as policy LP21 is not mentioned. Policy LP21 refers to change of use from agricultural land to residential garden and is reproduced at Appendix 9 (page 2).

63. There are no other policies in the development plan that deal with change of use of land to garden and therefore, paragraph 11 of the NPPF would apply again.

64. The use of the land as garden does not affect any areas or assets of particular importance. Furthermore, there would be no impacts arising from the development which would significantly and demonstrably outweigh the benefits which the garden land provides to the Appellants. Consequently, permission for the garden land should be granted in accordance with the presumption in favour of sustainable development

65. In simple terms, when it comes to the Garden/Amenity Land when asking the question "what's the harm in authorising the current use and building?" the Appellants say the obvious/commonsense answer is "none" or "negligible" – with appropriate conditions mitigating any additional unwanted or harmful impacts that may arise in granting such planning permission at appeal. The Appellants reserve their right to respond to any planning conditions that the Council (or Inspector) may propose through the life of this appeal.

66. In summary, if the Inspector finds that there has been a breach of planning control, it is the Appellants' case that, in the absence of a relevant policies, the use of the land as garden and the erection of the building constitutes sustainable development or at least a form of development which should have the benefit of planning permission.

67. The Appellants wish to note their wish/intention to call a suitably qualified planning agent as to make full submissions as to their ground (a) appeal.

Conclusions

68. The Appeal Site has always been associated with the Dwelling for many years, if not decades ~~dwellinghouse and it~~.

69. There is no breach of planning control in respect of the Woodland. Therefore, the plan to the EN should be amended to remove the Woodland and thus be limited solely to the Garden/Amenity Land.

70. The Garden/Amenity land meets the tests for curtilage land having been incorporated as part of the Dwelling for many years, if not decades.

71. Independent witnesses have provided statements confirming that the Garden/Amenity Land ~~area of the site where the building has been erected~~ has been in use as garden land (by the occupiers of the Dwelling) for a period in excess of 10 years and therefore the use of that land as garden/residential amenity land has become lawful through the passage of time.

72. The above being so, the building on the Garden/Amenity Land constitutes permitted development.

73. In the event that the current use of the Garden/Amenity Land is confirmed as lawful, this will be a material consideration in the determination of the ground (a) appeal (regardless of any outcome in the Appellants' ground (s) appeal).

74. In the event that Inspector finds that both the use of the land and erection of the building do represent a breach of planning control, both elements should be approved in accordance with the presumption in favour of sustainable development as stipulated by paragraph 11 of the NPPF.

75. reasons set out above, the Inspector is respectfully requested to allow this Appeal on Grounds (d) and (c), failing which ground (a).

Phil Cobbold BA PGDip MRTPI ~~December 2025~~

22 January 2026