

TOWN AND COUNTRY PLANNING ACT 1990

**BABERGH DISTRICT COUNCIL**  
**APPEAL FINAL COMMENTS**

**APPEAL BY MR & MRS WILLIS**

AGAINST ENFORCEMENT NOTICE ISSUED ON 17<sup>th</sup> November 2025  
IN REPECT OF:

*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.*

Land Rear of 30. Edies Lane

PI REF: APP/D3505/C/25/3376611

LPA Ref: EN/25/00533

DATED 12/02/2025

## 1.0 INTRODUCTION

1.1 The appellants have made rebuttal comments on the Council's decision to issue the Enforcement Notice, via their Planning Consultant, in the document APPEAL STATEMENT dated REVISED 22 JANUARY 2026 by Phillip Cobbold Planning Ltd., and further matters have been drawn to the attention of parties both by correspondence and during the Case Management Conference (the CMC) dated 4<sup>th</sup> February 2026. The Council makes the following comments in response to the points raised.

### 2.0 Hidden ground (e) –

Under Section 176(1) Town and Country Planning Act 1990 (as amended), the enforcement notice may be corrected in respect of defects, error or misdescription, or its terms varied.

2.1 Further to the CMC for Appeal ref. APP/D3505/C/25/3376611, for 30 Edies Lane, Leavenheath, CO6 4PA, the LPA has reviewed the Enforcement Notice and associated red line plan and considers it may be necessary to make minor adjustments to both to ensure the notice accurately describes the alleged breach and accurately identifies the land in the appellants' ownership. In the Council's view, there should be no prejudice to the appellants as a result.

2.2 The minor amendment to the text of the Notice is in relation to Section 2, The Breach of Planning Control Alleged, so that it reads: *“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 to a mixed use as woodland and residential, on the land outlined in red on the attached plan.”*

2.3 The minor amendment to the red line plan attached to the Notice is to exclude the two parcels of land to the rear of the neighbouring properties, “Kinnegar” and “Brylynn” that have been removed from the title ref. SK1314. A revised red line plan to accompany the notice is attached as Appendix 8a.

2.4 The Council invited comments from the Inspector and the Appellants on these minor amendments and in correspondence from The Planning Inspectorate dated 5<sup>th</sup> February 2026 The Council was subsequently advised that *“the Inspector suggests that any comments on the proposed changes and whether they would result in injustice to any main party in the appeal are submitted at Final Comments (due 12 February 2026)”*.

2.5 The amendments to both the wording of the Notice and the red line plan are therefore submitted for the Inspector's consideration.

- 2.6 The Council believe that the amendments to the Notice and associated red line plan would not cause injury or injustice to the Appellant, neighbours, or the Local Planning Authority (The Council) and serve a dual-purpose of addressing matters raised by the Appellant's agent in points *15 through 20*.
- 2.7 Section 176(5) allows for and accommodates The Secretary of State to ignore failures to serve an enforcement notice on someone who should have received it if no one is substantially prejudiced by that failure.
- 2.8 The requirements set forth in the notice do not require action or attention of neighbouring and shared-boundary properties, insofar that they have not undertaken the alleged material operation in respect of the erection of a building and a shed, nor have they undertaken or created an unauthorised alleged material change of use to land within the red line plan as specified within the notice, clarification of this would be provided by the Inspector's amendment to the plan and notice wording should he so choose to exercise this power to do so.

### 3.0 **Ground (a) Appeal**

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

- 3.1 The Appellants' appeal is limited to the Garden/Amenity Land (i.e. excludes the Woodland).
- 3.2 The Council have acted in respect of the use of the land and agrees that a demarcation of the dwellinghouse's curtilage is a key point to be determined, the Council would accept amendment (RE: s176(1)) to the red line site plan for purposes of clarity where no injustice would be caused. However, the red line plan (with suggested revision for the Inspectors attention) and the area included was issued as such as the Council are concerned that incrementally or otherwise that the woodland area may be subject to further works, changes of use or claims of lawfulness towards its connection and use toward the dwellinghouse.
- 3.3 The site sits outside of the settlement boundary which is accepted and confirmed by the Statement of Common Ground agreed between the Council and Appellant/s.
- 3.4 The justification and explanation of proposed development outside of the Settlement Boundary on this site was provided to the current landowners via pre-application advice sought from the Council, Ref: DC/25/00813. The Officer report is supplied as Appendix 9a.

- 3.5 The Site plans (existing and proposed) supplied by the Appellant via their agent to DC/25/00813, shows and states a demarcation and separation of the established dwellinghouse curtilage from the land to the south, its garden and the larger portion of the site to the South being annotated as “Woodland/ Scrub Area” (changed to “managed wooded area in the proposed plan) and the Garden extending to a line commensurate with the neighbouring property, 30A’s termination of boundary fencing treatment. The site plans are supplied as Appendices 10a and 10b.
- 3.6 Within the Officer’s report further clarification on the supportability of the proposed development is given - *the principle for 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. Furthermore, 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.*
- 3.7 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.
- 3.8 As advised within the Officer’s Report, The proposal to develop the Woodland portion of the site would require further consideration and assessment in terms of Biodiversity and potential loss of or harm to habitat, RE: DC/25/00813 *Due to the southern portion of the site appearing to not be residential curtilage, the provision of the storage building would require the submission of a full planning application, which would trigger the requirement of demonstrating 10% biodiversity net gain. Noting the heavily wooded appearance of the area, sufficient mitigation would be required to be provided on the loss of any habitats.*
- 3.9 The Appellant’s have demonstrably undertaken works which included the clearance of land, including removal of scrub, vegetation, and the removal of trees. Attached is Appendix 11a. showing compared Satellite imagery of the site, supplementary to Appendix 4c provided with the Councils’ statement January 2025. Areas no longer appear to host trees, south of the dwelling and into the appeal site.
- 3.10 Further images from Officers site visit, RE: Appendix 6c show areas of clearance, and amounts of stacked timber appearing to have originated from trees on the land.

3.11 The Council contests the Appellant's point raised RE: Para 44. Within their statement that should the *Land has[have] 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"*. Part 1, Class E of the General Permitted Development Order 2015 (as amended), specifies that buildings are to be incidental. There is no mention of Ancillary, and therefore the shed and building as specified in the notice would still require express consent.

3.12 The Appellant's statement further states *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.* The Council draws attention to further argument made in Para. 50 of the Appellant's statement that the wording of SP03 includes the word "normally" in its applicability to control of development. Para. 50 therefore accepts and asserts that the siting of sheds, structures *et al.* is part and parcel of expected acts of development one might see upon land associated with a dwelling e.g. for garden residential use and purposes, notwithstanding the extent of its curtilage and whether or not express consent is required.

#### 4.0 **Ground (c) Appeal**

4.1 The locations of the shed and building are such that they do not appear to have an incidental function, use or relationship to the host dwelling.

4.2 The shed and building are located almost wholly along the termination of the neighbouring property (30a) boundary fence, and the siting appears such that the visual impact is maximised upon the neighbouring property and not upon the host dwelling.

4.3 The location of the shed and building are measured from aerial imagery approximately 30 metres from the rear elevation line of the host dwelling. Please see 12a. with image dated 22<sup>nd</sup> June 2025 with included measurement.

#### 5.0 **Ground (d) Appeal**

5.1 The Council has no final comments to provide in respect of the ground (d) appeal other than those provided in its statement dated January 2026.

#### 6.0 **Other Matters**

6.1 The Council will be contacting the appellants to request a further Site Visit for the purposes of taking measurements and noting features of the site, shed, and building. This will support the Council in producing an independent site plan.