



Appeal Decisions

Inquiry held on 31 March 2026

Site visit made on 31 March 2026

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st April 2026

Appeal A Ref: APP/D3505/C/25/3376611

Appeal B Ref: APP/D3505/C/25/3376612

30 Edies Lane, Leavenheath, Colchester, Suffolk, CO6 4PA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Adam Willis against an enforcement notice issued by Babergh District Council. Appeal B is made by Mrs Yasemin Willis
 - The notice was issued on 17 November 2025.
 - The breaches of planning control as alleged 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.
Without planning permission, the unauthorised material change of use of the land for residential purposes, on the land outlined in red on the attached plan.
 - The requirements of the notice are to: 1. Cease the use of the land edged in red on the attached plan, and buildings in the approximate location marked X, for residential purposes. 2. Demolish the buildings in the approximate location marked X on the attached plan, including footings, and remove any and all resultant materials from the site. 3. Disconnect and remove any and all utility and service connections to the buildings in the approximate location marked X on the attached plan, and remove any and all resultant materials from the site.
 - The period for compliance with the requirements is: Six months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on grounds (b), (c) and (d).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words 'for residential purposes' and substitution with the words 'to garden area associated with the residential use of 30 Edies Lane' in the second element of the allegation in section 2 of the Notice; and the corresponding correction of the requirement in section 4.1 of the Notice by deletion of the text ', and buildings in the approximate location marked X, for residential purposes.' and their substitution with ' as garden area associated with the residential use of 30 Edies Lane'.
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to the corrections, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The Notice includes allegations of a material change of use and the operational development consisting of the erection of buildings. The appellants confirm that their ground (c) appeals relate only to the operational development and that the ground (d) appeals relate only to the use of the Land. Because the ground (c) is potentially dependent on the outcome of the ground (d), I depart from the usual order of considerations and deal with the ground (d) earlier in the sequence.

Ground (b) and the Notice

4. Prior to the Inquiry, a case management conference was held on 4 February 2026. Following concerns expressed by the appellants in relation to both the description of the alleged use of the land and buildings, and that the Notice extended to include an area of woodland claimed to be in separate use, it was acknowledged that those contentions amounted to a hidden ground (b) appeal - that the matters alleged in the notice have not occurred. Furthermore, it was identified that the Notice included land within two adjacent residential plots at 32 and 34 Edies Lane (Kinnegar and Brylynn respectively) whose occupiers had not been served with a copy of the Notice.
5. Section 176 of the Act requires me to consider the status of the Notice and whether any defect, error or misdescription could be corrected, or its terms varied, without injustice to the appellants or the local planning authority.
6. In the run-up to the Inquiry the Council proposed an alternative plan excluding the land associated with Nos.32 and 34. There was no dispute that that proposed correction could be made without injustice to any of the main parties in the appeals.
7. Concerns that reference to the 'use of the land for residential purposes' connotated something more than garden/amenity land and buildings, and the Council's alternative suggestion of amending the alleged use to a mixed use of residential and woodland uses rather than reducing the area subject of the Notice, were also raised by the appellant. I subsequently sought the views of the parties at the event.
8. I have some sympathy with the Council's requirement to accurately define a southerly limit to where the alleged residential garden use might extend to. This is on account of changes made on the ground along with various references to land uses in earlier correspondence with the appellants and other enquiries made by them. However, the Council's submissions clearly acknowledge a precautionary approach which sought to be preventative of possible future use of some or all of the woodland area. It is not a legitimate approach for an enforcement notice to be prospective¹.
9. Notwithstanding that difficulty, a mixed use referencing both residential and woodland uses over the entirety of the Notice area would materially alter the allegation and the considerations in the remaining grounds of appeal. Such a correction would therefore likely lead to injustice to the main parties. Accordingly, the parties were subsequently invited to seek to agree the extent to which a single alleged use might be considered in the appeal. This was agreed between the Council and the appellants. The subsequent plan limiting the extent of the Notice to

¹ See *R v Rochester-upon-Medway CC ex parte Hobday* [1990] JPL 17

land to the rear of 30a, 32 and 34 Edies Lane (the Land) will be substituted to replace the previous plan.

10. Although not necessarily incorrect, I agree that reference to ‘residential purposes’ in the allegation implies something more than ancillary domestic use of the land and buildings. On my suggestion of the alternative of ‘the use of land ancillary to the residential use of the dwelling at 30 Edies Lane’ there was brief discussion on the intricacies of referring to ‘ancillary’ or ‘incidental’ uses. Notwithstanding, subject to a corresponding amendment to the relevant requirement in section 4 of the Notice, the parties agreed that description could be similarly refined without prejudice. The Notice will be amended accordingly².
11. The ground (b) succeeds to the extent that the plan attached to the Notice and the description of the alleged use with corresponding change to the first requirement are corrected.

Ground (d)

12. The appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of the alleged use of the land. The burden of evidence lies with the appellants. To be successful on this ground it would be necessary for the appellants to demonstrate that the land was used continuously for the relevant 10-year period of immunity prior to the issue of the Notice and, for the purposes of the ground (c) appeal, 10-years before the commencement of the construction of the buildings in September 2025³. The test is on the balance of probability – that is whether the claim is more likely than not to have occurred.
13. In respect of garden uses, the continuity of use need only be to that typical of any domestic garden but to the extent that, had the Council arrived on the site at any point during that period, they could have concluded that it ‘appeared’ to them that a breach may have been taking place⁴.
14. There is little dispute between the main parties that aerial photographs of the site show areas of a management regime distinct from the woodland and a more consistent appearance of some of the Land with the lawned areas close to the house. However, the extent of the land subject to that more domestic-style management appears to change over time. Aerial photographs dated from 2007 onward show a strip behind no.30a that appears to narrow to the rear of no.32 and it is unclear as to how far it extends behind no.34, if at all. Tree and/or mature vegetation cover, which appear distinct from lawn, can be seen to variably encroach over the contested area, particularly within both the southern and the eastern parts of the Land.
15. The evidence provided by witnesses who have had responsibility for maintaining the lawned area in recent years, consistently asserted that mowing took place up to the tree line. From the aerial photographs and images provided by a neighbouring occupier, the line of trees appears to define a much more limited area compared to the Land subject of the Notice.

² Because the buildings would either stand or fall on the remaining grounds of appeal, deletion of reference to their use in requirement 4.1 of the Notice would not alter the effect of the Notice.

³ Where the ground (c) contention is that the buildings benefitted from planning permission granted by virtue of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), the use of the land must be lawful on the date of commencement of their construction.

⁴ See *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; [2002] JPL 1278

16. The evidence of Mr Hore, a long-standing resident in the area and friend of the former occupiers of the site, suggested that a ride-on mower, and before that a tractor, was used by the previous owners to maintain the grassed areas up to the tree line. However, while the ownership and maintenance of land might be indicative of use, there is little evidence of actual use of that part of the site taking place. When asked directly, Mr Hore was unable to say to what use the Land was put by the previous owners.
17. I accept Mrs Willis' contention that when walking the area with the former owner prior to the purchase of the property, Mrs Randall described it as part of the garden. However, without more, there is little basis to conclude that any activity aside from maintenance had actually taken place on the Land. The fact that the former owners had previously disposed of the adjacent land, now incorporated into neighbouring gardens, suggests those areas were surplus to any functional domestic needs on the part of the former owners. It casts some doubt as to whether more distant land from the house would actually be subject to the regular use necessary to invoke any material change in the character of how the land was used.
18. In more recent times, evidence provided by the appellants during an initial investigation led to the Council concluding that no material change of use of land within the cleared ground of the woodland fringe had occurred. This also accounted for the more recent maintenance regime and changed appearance of the land.
19. I note the appellants' contentions regarding the details of single ownership of the whole of the land including the dwelling, the immediate surrounding land, the woodland and all areas in between. However, in the absence of clear and unambiguous evidence as to the use that the Land was put, I find the appellants have failed to discharge the evidential burden to demonstrate that it had probably consistently been in use as garden area associated with the residential use of 30 Edies Lane for a relevant period prior to the issue of the Notice. Accordingly, the appeals on ground (d) must fail.

Ground (c)

20. An appeal on ground (c) is that the matters stated in the Notice do not constitute a breach of planning control. It is the appellants' contention that the buildings subject of the Notice benefit from planning permission by virtue of Article 3(1) and Class E(a) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) which provides 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.

This contention is predicated on the buildings being located within the garden and curtilage of the dwellinghouse at 30 Edies Lane.

21. The GPDO does not define the term 'curtilage', however, the Technical Guidance: Permitted development rights for householders (2019) advises it is 'land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.' A curtilage may not, therefore, necessarily coincide with a garden area.

22. However, I have found that the relevant area where the buildings are sited has not been demonstrated to have a lawful use in association with the use of the dwellinghouse. It follows that the land lies outside of the planning unit (PU) consisting of the dwelling and its gardens. While the concept of 'curtilage' does not involve a use of land, it nevertheless is a relevant consideration⁵.
23. Moreover, the land in question is remote from the dwelling, lies offset beyond the width of the originally approved PU, is interrupted in part by intervening third party land, and 'tucked away' according to the appellants. The physical layout and extent of tree coverage lends more weight to the land being a component of the wooded area rather than the width restricted area of the original garden. While none of those matters are definitive, and despite either the single ownership, the lack of delineation or separate enclosure, or that the buildings could be used for purposes incidental to the enjoyment of the dwellinghouse, I find the distant land falling beyond the lawful garden area does not have the necessary intimate connection with the dwelling to be considered as part of its curtilage.
24. Accordingly, the buildings do not benefit from the provisions of the GPDO because they conflict with its terms. In the absence of alternative reasons as to why the buildings would not require planning permission as 'development' defined under s55(1) of the Act, I find the appeal on ground (c) fails.

Ground (a) and the deemed application for planning permission

Main Issues

25. The main issues are whether the development alleged in the Notice is consistent with the Council's adopted spatial strategy for new development. This turns on issues including the effects of the development on:
- the character and appearance of the locality
 - nearby residents' living conditions
 - biodiversity.

Reasons

Locations for new development

26. In contrast to the dwelling and immediate gardens at no.30, the Land and buildings subject of the Notice lie beyond the local settlement boundary as identified in the Babergh and Mid Suffolk Joint Local Plan Part 1 [2023] (the JLP1). Strategic policy SP03 of the JLP1 directs new development to land within defined settlement boundaries in order to promote sustainable distributions of development, but also to restrict development from adversely affecting the intrinsic character of the countryside (para. 08.03). It seeks to limit most development outside the settlement boundaries.
27. Although the adoption of the JLP1 pre-dates the latest iteration of the National Planning Policy Framework (the Framework), contrary to the appellant's contention, I find the policy is applicable to all forms of development and consistent with the Framework's aim of achieving sustainable development. It is therefore entitled to full weight in the context of s38(6) of the Act.

⁵ See *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

28. Policy SP03 highlights a number of exceptions to the restriction to development beyond settlement boundaries. These include various types of development complying with policies listed in Table 5 of the JLP1. Of those exceptions, the most relevant policies are Policy LP03(1) relating to residential extensions and conversions, and Policy LP21(1) relating to the change of use of agricultural land to residential garden. There was no dispute between the main parties that if used for purposes incidental to the use of the dwellinghouse, Policy LP02 – Residential Annexes, would **not** be applicable to the buildings subject of the Notice.
29. Policy LP21 permits the change in use of agricultural land to residential garden subject to protection of landscape characteristics, biodiversity and residential amenity, including the cumulative effects of such changes of use. Although the Council consider the policy should not apply because the woodland use of the land falls outside of the s336 definition of ‘agriculture’, it has substantially raised the same issues identified in that policy against the alleged material change of use. Accordingly, while it may not strictly apply in the case circumstances, I find it provides a reasonable basis against which the use of the Land might be assessed and is consistent with requirements in the Framework.
30. Policy LP03 is also a criteria-based policy. Although the existing buildings are detached from the dwelling there is little reason within the policy or pre-text as to why it might not apply to detached ancillary domestic buildings to provide for additional accommodation meeting occupier needs. Indeed, by incorporating reference to the conversion of ‘buildings’ for those purposes, and giving garages as an example, the policy implies that it would include and apply to buildings detached from the main dwelling.
31. According to the appellant, the Council utilised Policy LP03 to determine an application for an outbuilding in the countryside elsewhere; however, I note that was said to be due to its proximity to the house. That decision is not before me. Nevertheless, even if that policy is not commonly used by the Council for outbuildings, it seems to me again that the specified criteria encompass the relevant planning considerations such that weight to that policy and the equivalent provisions in the Framework should apply.
32. Whether or not the developments subject of the Notice meet the relevant ‘exceptions’ criteria are discussed in the following paragraphs.

Character and appearance

33. The settlement boundary is drawn to distinguish between the planned layout of mainly built residential development and the intrinsic character of the countryside beyond. In the locality the latter largely consists of gently undulating open fields bordered by hedges with intermittent blocks of woodland. In the southern part of the settlement where larger domestic plots predominate, the settlement edge often cuts through individual domestic plots such that their typically well-defined borders extend outside of the boundary while the dwellings and domestic outbuildings mainly lie within.
34. The sequence of aerial images provided by the main parties shows that the Land in question has not had a clear boundary in the recent history of the site. Furthermore, the domestic area to the northwest can be seen to transition to the woodland rather than open agricultural fields; in that sense the settlement boundary is locally relatively unique.

35. The Council's site investigation shows some evidence of the removal of trees within the period of the appellant's recent ownership; however, it is unclear whether this occurred in the more limited area of the revised Notice, or elsewhere. Notwithstanding that, or the fact that planning permission is not required for the maintenance of land, there has been a clear change to the character and appearance of the Land in question.
36. The aerial photography evidence shows the established grass strip maintained to the rear of 30a and 32 Edies Lane. However, the totality of the Land subject of the Notice is several times the width of the grassed area estimated as 5m wide by the neighbouring resident. The facilitating clearance of the remainder of the Land to allow safe and unencumbered access is in stark contrast to the previous naturalised state beyond the initial mown strip. This is evident in the neighbour's photographs and the property sales particulars taken before any clearance occurred. Whereas the extent of vegetation cover across most of the contested land appears to have pertained to the woodland characteristic, that can no longer be said with the introduction of extended grassed areas contiguous with the managed lawns about the house.
37. Mrs Willis' evidence describes the woodland having a distinct boundary. However, on the ground, that is no longer the case. Undergrowth has been replaced with monoculture grass seeding and the remaining dispersed trees provide little visual clue as to where any distinct line of woodland might start or finish.
38. The appellant contends that the changes on the limited area subject of the Notice do not materially alter the wider character of the locality. However, in conjunction with the previous extension of neighbouring gardens, the domesticated appearance of the enlarged area significantly undermines the character of the rural fringe. This is visible from adjacent properties and the public right of way to the west. The incremental encroachment conflicts with the policy aim to protect the rural character and prevent adverse effects arising from cumulative instances of garden extension.
39. The urbanising effect is exacerbated by the presence of the buildings and a substantial gravelled area alongside the unfinished structure. While the timber shed is a typical example of a small garden shed, the plans of the larger building show it as a relatively sizeable construction compared to the dwelling, and to be built to a high specification.
40. The remote offset positions of the buildings from the dwellinghouse and the requirement for the dedicated access are not typical of the local relationship between primary and secondary domestic buildings. In views from the public footpath, the structures would neither appear as typical rural buildings, nor read as part and parcel of the main dwelling.
41. I acknowledge the appellant's contention that other precedent examples of outbuildings exist beyond the settlement boundary in the locality. However, these are in the minority. Moreover, precedent is rarely an argument that should carry great weight in planning decisions which should be made on their own merits in the context of the development plan and other material considerations.
42. At the Inquiry I heard that the larger building could be clad in dark timber boarding locally characteristic in the rural area; however, that would be unlikely, in my view, to alter the fundamental character of the building. The domestic scale and design would not be fitting of its rural location isolated from the main house. Indeed, the

presence of the subordinate shed alongside the intended scale of the large building, would cause it to appear as a separate arrangement of buildings rather than relating to the existing dwelling.

43. For the reasons above, I find the buildings do not enhance the character or appearance of the countryside and alongside the works to facilitate the use of the land as garden do not maintain or enhance the former landscape characteristics. The development conflicts with planning considerations identified in Policies LP03 and LP21 of the JLP1. In turn, it also conflicts with Policy SP03 as it fails to meet any of the exceptions to the restriction of development in the countryside.

Living Conditions

44. The buildings are sited directly behind the rear garden boundary of 30a Edies Lane. While the shed is modest in scale and almost aligned with the western boundary of that plot, the partially built building is larger and more centrally positioned, albeit offset further from the boundary.
45. On the appellants' case, the buildings would fall within the limits of construction permitted by the GPDO. As such, their overall height at eaves and ridge levels would be commensurate with domestic garden developments generally unlikely to have a material adverse effect on neighbours' living conditions.
46. The development will be clearly visible from the dwelling at no.30a and from within the rear garden due to the open nature of the existing post and rail fence on that boundary. This arrangement previously afforded views to the woodland as shown in photographs taken from within that garden area. However, in most circumstances, views across third party land are not protected. Although the outlook from the adjacent premises will have significantly changed, the scale and proximity of the development, even once completed, would not be so great to appear as an overbearing form of development.
47. As highlighted by the appellant, a boundary fence up to 2m in height could probably be erected along the common boundary under the terms of the GPDO. If so, only the upper parts of the building and roofs pitching away from the boundary would be visible. The effect on neighbours' living conditions would not justify a reason for a refusal of planning permission.
48. Although the structures will inevitably cause some overshadowing, this will be a very minor effect to a limited and distant part of the neighbour's garden. The occupiers' living conditions would be largely unaffected by that issue.
49. At the Inquiry, I heard various representations in relation to the potential use of the buildings, including concerns it might be used in conjunction with the appellant's business. If so, the written representations of some neighbours had expressed concerns in relation to potential noise, traffic and associated pollution if frequent larger commercial vehicles were required to access via both Edies Lane and the recently constructed track.
50. While Mrs Willis' evidence stated that commercial use was never intended and she provided detail of commercial premises used by the appellant elsewhere, it was acknowledged the prospective use of the building had changed since inception. She ultimately confirmed that the larger building would be used for storage and play space. Any potential use of the building for other purposes could nevertheless be

reasonably be controlled by planning condition. It could exclude non-incidental commercial uses, for example. In my view, any potential for adverse effects arising from the use of the building could therefore be duly controlled to avoid excessive noise or intensive activity that might affect neighbours' living conditions.

51. For the above reasons, I find the development would align with requirements in Policies LP03 and LP21 of the JLP1 as they seek to ensure development does not unacceptably affect the amenities of neighbouring occupiers.

Biodiversity

52. Amongst other things, Policy LP21 of the JLP1 requires that material changes of use to residential garden should not have an adverse impact on the biodiversity of the locality.
53. The Biodiversity Net Gain requirement under Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990 does not apply to development where retrospective planning permission is sought under the deemed application for planning permission route. Nevertheless, a requirement for biodiversity mitigation and enhancement exists under policy LP16 of the JLP1. While third party evidence and Leavenheath Parish Council refer to the former wildlife value of the land, there is little specific detail relating to the now more limited area subject of the revised Notice.
54. As above, it is unclear as to the extent of any tree removal from the site. According to the appellant clearance of an understorey of bramble and overgrown scrub took place. The area has since been grass seeded. While I find it probable that works to facilitate the change of use of the land have resulted in some biodiversity losses, I am satisfied – particularly given the extent of local land ownership, that a suitable scheme of biodiversity enhancements could be secured to offset those effects in the more limited area now subject of the Notice. Accordingly, the development could be made acceptable in planning terms in respect of biodiversity.

Other Matters

55. I note the appellant's contention that the approach taken by the Council is inconsistent with that taken elsewhere. However, there is little evidence of those other cases before me to allow comparisons, or otherwise, to be drawn. Accordingly, that claim is of limited weight in the appeal.

Conclusion on the Ground (a) appeal

56. Notwithstanding that I have found in favour of the appellant with regard to the matters of biodiversity and the effects of the development on neighbour's living conditions, I do not consider these matters outweigh the identified harm to the character and appearance of the countryside. The development conflicts with the Council's policies for the distribution of new development, including in the interests of preserving the intrinsic character of the countryside. I therefore conclude that the development conflicts with the development plan read as a whole and there are no other considerations, including the Framework, that outweigh this conflict. The appeal on ground (a) should be dismissed.

Conclusion

57. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

R Hitchcock

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Micheal Harman Solicitor, Holmes & Hills LLP

he called:

David Cobbald Landscape gardener and director EIB Landscaping Ltd.

Chris Heard Gardener, Insideout

Peter Kevin Hore Resident

Yasemin Leila Willis Appellant

Contributions to the roundtable discussion were also heard from:

Phil Cobbald Phil Cobbald Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Robin Green KC Cornerstone Barristers

he called:

David Steel Senior Planning Enforcement Officer, Babergh District Council

Contributions to the roundtable discussion were also heard from:

Simon Bailey Enforcement Team Manager, Babergh District Council

OTHERS

Ann Tomkins Neighbouring resident

EVIDENCE SUBMITTED AT THE INQUIRY

1. Appellants' Opening Statement
2. Plan showing agreed reduction of the area of land subject to the allegation and requirements in the enforcement notice.
3. Statement of Ann Tomkins on behalf of Ann and Michael Tomkins of Broadley, 30a Edies Lane.
4. Closing Submissions on Behalf of Babergh District Council.



Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 21 April 2026

by R Hitchcock BSc(Hons) DipCD MRTPI

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

Reference: APP/D3505/C/25/3376611 & 3376612

Scale: not to scale

