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Planning Appeals

Richard Ground KC
Jack Barber

Planning Day | November 2026

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QUIZ: PLEASE STAND

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November 2026

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QUESTION 1 OF 5

Appeals by type

?

Between October 2025 and September 2026, **what percentage of cases decided after an inquiry were allowed?**

Clue: *on written reps cases, the figure was 29.6%.*

A **51.9%**

NO HANDS

B **62.8%**

✋ 1 HAND

C **71.7%**

✋✋ 2 HANDS

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QUESTION 2 OF 5

Presumption and housing

?

Since the 2026 NPPF was published, what is the **allow rate for major appeals** where the S4 or S5 presumption is mentioned?

Clue: *130 major appeals on the Planther database in that period, with an overall allow rate of 61.6%.*

A **58.7%**

NO HANDS

B **64.6%**

✋ 1 HAND

C **67.3%**

✋ ✋ 2 HANDS

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QUESTION 3 OF 5

? Which site did the inspector find **physically well related** to the settlement?



A Denham Corner NO HANDS



B Buntingford 1 HAND

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QUESTION 4 OF 5

Design policies DP3 or DP4

? Across **appeal decisions of all sizes** since the 2026 NPPF was published, **what percentage were refused where DP3 or DP4 is mentioned?**

A **50%**

NO HANDS

B **65%**

✋ 1 HAND

C **81%**

✋ ✋ 2 HANDS

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QUESTION 5 OF 5

DP3 or DP4: major appeals

? Of the **42 major appeal decisions** since the 2026 NPPF was published that mention DP3 or DP4, **what percentage were refused?**

A 50%

NO HANDS

B 65%

✋ 1 HAND

C 73%

✋ ✋ 2 HANDS

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The questions we're going to address

1. **Does the new universal tilt in S4 and S5 make a big difference to the outcome?**

2. **When are proposals "physically well related" to satisfy S5(1)(j)i?**

3. **How to avoid being DP3d?**

4. **In the context of affordable housing, what is needed to evidence an unmet need?**

5. **Is this the quiet end of the primacy of the Development Plan?**

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1 Does the new tilted balance make a big difference to outcome?

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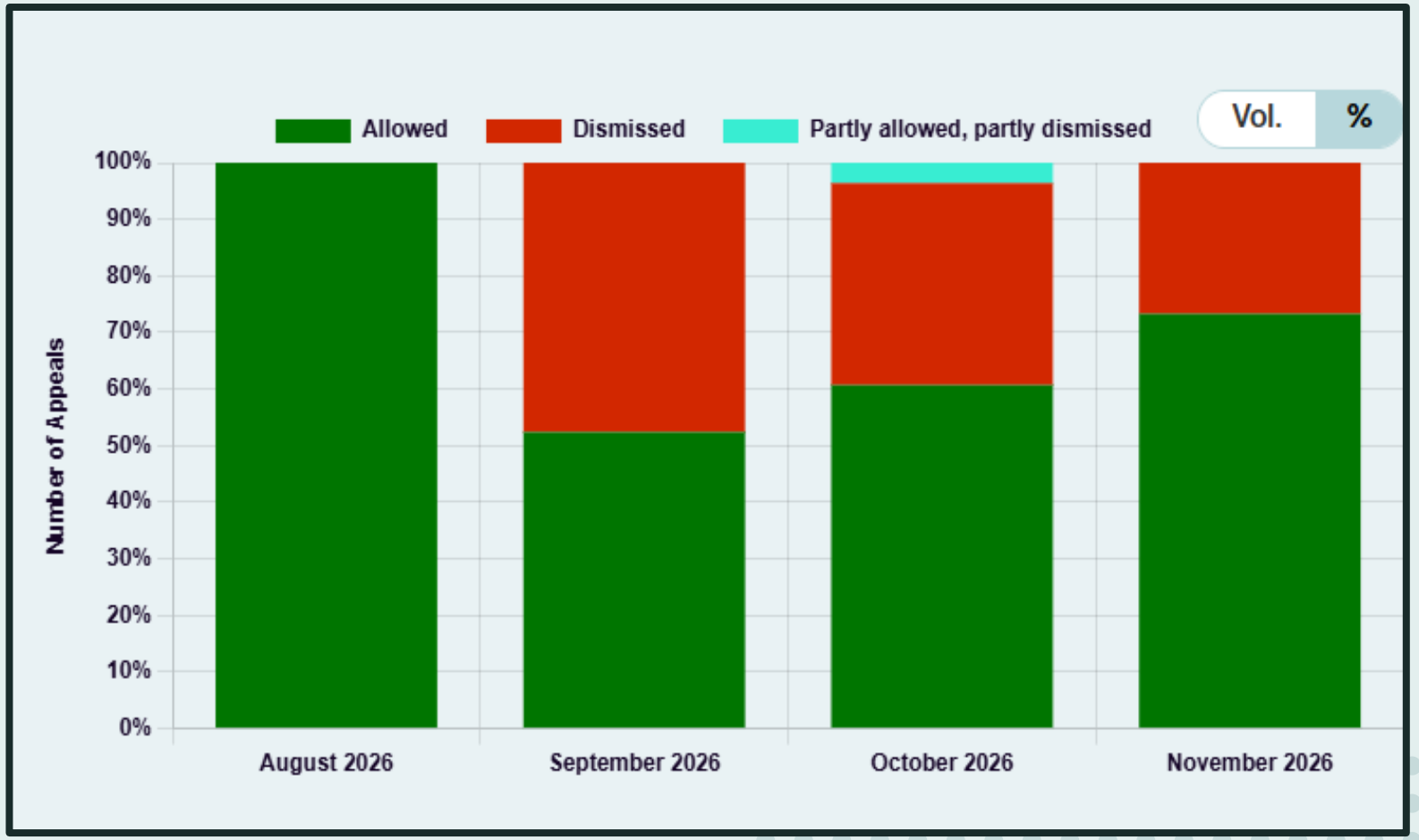
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How much difference does presumption make to chances of success

% of 10+ housing schemes won on appeal

(S4/S5 mentioned)

Source: Compass



Pennycook Letter to PINS 6 October 2026

> key elements of the new Framework that are intended to support the government's ambitions in respect of boosting housing supply and driving economic growth.
>
> The Framework's revised presumption in favour of sustainable development introduces a more rules-based approach to identifying what forms of development are acceptable in principle in different locations. It is a key means by which the Framework should make development management more certain, consistent and streamlined.
>
> Subject to specified exemptions, the revised presumption supports development within settlements by default, with the intention of maximising the use of suitable land in these locations for development (in conjunction with the policies in the dedicated chapter on making effective use of land). Outside settlements, we have introduced clearer rules for what development should be supported in principle, including in instances where a local planning authority cannot demonstrate a five-year supply of deliverable sites for housing.

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2 “Physically well-related”

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Physically well-related?

S5(1)(j) REQUIRES: 1 an evidenced unmet need & **2** a site **physically well-related** to an existing settlement

NOT WELL-RELATED, DISMISSED

Land at Denham's Corner

6005642 · 26.10.2026 · up to 150 homes

Cut off large wood between.

Rural feel.

Poorly connected.

WELL-RELATED, ALLOWED

Land North of A507, Buntingford

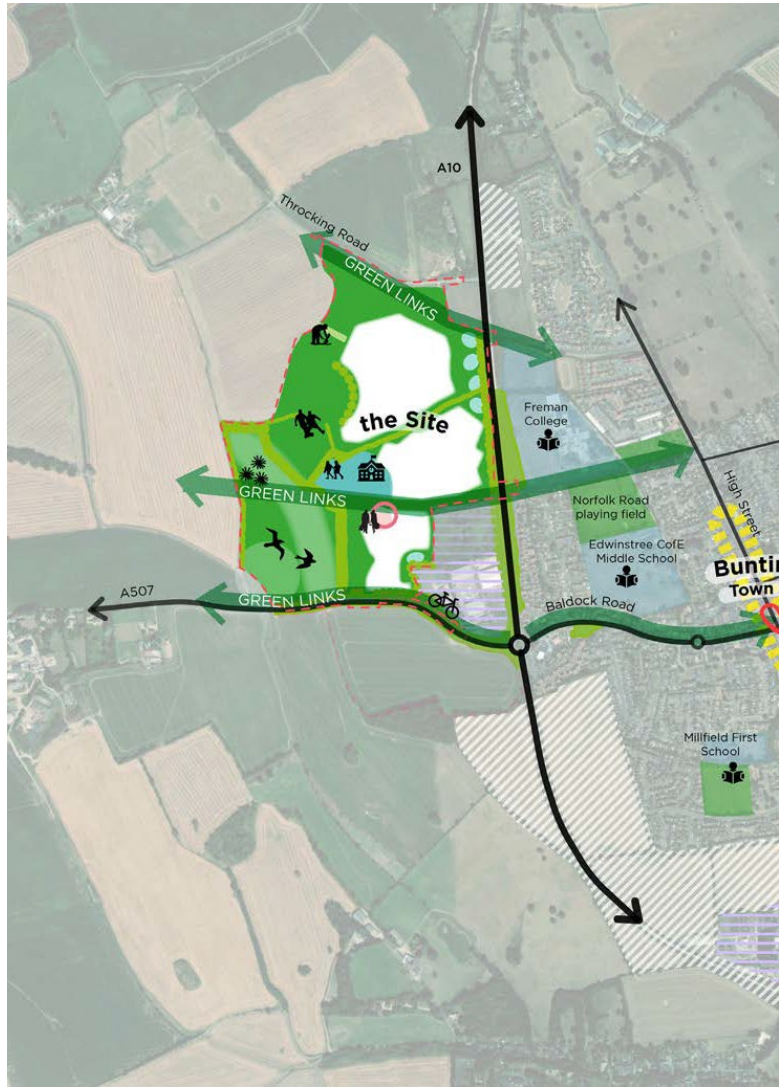
6008238 · 24.09.2026 · up to 600 homes

Adjacent.

A10 a "soft connection".

Linked. Bridges, a toucan crossing, active travel routes and intervisibility.

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What made the difference at Buntingford?

- Bridges and connections across the A10
- Sustainable routes to town Centre
- Proximity
- Intervisibility.

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3 How to avoid being DP3d

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DP3: the design route to refusal

NPPF

Mat con of ***"critical importance"***

S4(1) & S5(1)

Approve unless benefits are ***substantially outweighed***

S4(2)/S5(2)

Substantially outweighed where NDMP says ***should be refused***

DP3(3)

Should be refused*, if, without* ***clear justification…***

81% of all applications on appeal mentioning DP3 refused
50% of major applications on appeal mentioning DP3 refused

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Outline schemes

SHORTLANDS FARM · 6008529

DP3(1) requires response to local context, unless clear justification.

L3 of the Framework sets a minimum density.

The 3-storey elements weren't needed for density; didn't respond to local context.

WHY NO REFUSAL?

At outline, the flaw went to **indicative detail**, not the **principle**.

> *"It follows that this potentially significant flaw in the indicative design is not fatal to this outline scheme because it does not go to the principle of whether up to 200 homes can be provided successfully."*
>
> **para. 44.**

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Outline schemes

WEST OF HURRICANE AVENUE · 6009682

> *Policy DP3 of the Framework requires that development proposals respond to their context and integrate with and enhance their surroundings and that this should not preclude change. Given the nature and extent of the harm associated with this* ***outline application****, based on the evidence in this case* ***I do not find conflict with this policy.*** **6009682, Central Bedfordshire, para. 14.**

No conflict with DP3, at outline.

CONCLUSION

DP3(3) can be argued **not to be engaged at outline stage** where the alleged design failings go only to **reserved matters**.

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What about schemes seeking full permission?

On a scheme seeking **full** permission, details open to attack.

- Provide **clear justification** for any departure.
- **Final sentence of DP3(3):** *Substantial weight should be given to compliance with relevant development plan policies when assessing the design quality of proposals.*
- **Strategy:** make DP3 work for the scheme instead of against it, where possible.

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4 What is needed to evidence an unmet need?

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What is needed to evidence an unmet need?

S5(1)(j) Tilted balance where there is an evidenced unmet need, which **includes** no 5YHLS or HDT result below 75%.

INSPECTOR'S APPROACH

Spring Hill, (6005809), para 60

Unmet AHN + marginal 5YHLS = S5(1)(j).

vs

MINISTERIAL POSITION

Lords answer, 15.09.2026

"The presumption … would not be engaged through those policies."

LORD BANNER KC:

Does the Government agree with the Inspectorate's approach in 6005809?

MINISTERIAL REPLY

No comment on specific cases; revised PPG to follow.

UNRESOLVED

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What are the practical takeaways of that situation?

1. **Treat Spring Hill as live but contested.**
2. **Lead with the strongest facts.**
3. **Evidence the need thoroughly.**
4. **Watch the revised PPG.**
5. **Don’t forget the other limb.**

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5 The quiet end of the primacy of the Development Plan?

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Plan conflict doesn't predict refusal

SAMPLE: s78 inquiry, residential schemes, >30 dwellings,18.08.2026–10.11.2026.
SOURCE: Compass.

15/18 APPEALS ALLOWED

12/15 ALLOWED conflict with DP

3/3 DISMISSALS conflict with DP

1 THE PRESUMPTION

Is it in an S4/S5 category?

2 THE OFF-SWITCH

Does it breach a refusal-type policy?

S38(6) survives in form: Every decision still runs **"conflict with the plan, then material considerations"**, but the application of the Framework is now decisive.

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