

SURREY COUNTY COUNCIL**APPLICATION TO REMOVE LAND KNOWN AS THE HALLAMS,
LITTLEFORD LANE, BLACKHEATH, Nr GUILDFORD FROM
THE REGISTER OF COMMON LAND****PROCEEDING UNDER REFERENCE NUMBER 1876**

INSPECTOR'S REPORT

Introduction

1. I am instructed by Surrey County Council in its capacity as commons registration authority (CRA). This report contains my advice and recommendation to the CRA on whether grounds exist which require it to accede to an application to de-register land falling within reference CL 435.
2. The application concerns a substantial Grade II listed property set in the Surrey Hills Area of Outstanding Natural Beauty with gardens and grounds extending to around 12.4 acres. The application was made on the Form CA13 dated 11 May 2016 by Carol Collins and Richard Turner as registered freehold proprietors of The Hallams whose postal address is Littleford Lane, Blackheath, Guildford GU4 8QZ, and whose interest is registered under title numbers SY390135 and SY503275. The applicants (As) purchased The Hallams in 2013.
3. The Hallams is located in the countryside outside the village of Blackheath. In broad terms, roughly half the land (the western half) consists of extensive woodland acting as a buffer between the main house and Littleford Lane in the west and the publicly-accessible heath to the north. As an aid to

identifying the affected land, reference should be made to the plans in the appendices.

- 3.1 At Appendix 1 there is a recent plan (produced by As) on which the entirety of the registered common land is shown cross-hatched blue.
- 3.2 At Appendix 2 there is another recent plan (also produced by As) showing cross-hatched blue the land which they claim should be de-registered. This land will be referred to herein as the application land (AL). The land to the west of the AL is unmanaged woodland whereas the AL includes the main house and garden and its various outbuildings as well as the main access.
4. This application is made under the Commons Act 2006, Sch.2, at paragraph 6, which enables land to be de-registered as common land in circumstances where land was registered under the default procedure contained in the Commons Registration Act 1965.
5. An application made under Sch.2, paragraph 6, enables land to be de-registered as common land where (a) the land was provisionally registered as common land under the Commons Registration Act 1965 (as it was in this case on 24 September 1968); (b) on that date the land was covered by a building **or was within the curtilage of a building** (the main house – The Hallams – was built in 1894-95); (c) the provisional registration became final (which occurred here on 1 August 1972); and (d) that since 1968 the relevant land has been covered by a building **or else has been within the curtilage of a building**.
6. As the above highlighting implies, the core issue on the application is whether the curtilage of the main house is accurately represented by the boundaries shown on the plan at Appendix 2?
7. This was originally a registration of rights of common. However, these rights were released by the applicant commoner in 1978 from which it follows that the AL is currently a registered common but with no subsisting rights of common thereon. Whether the public enjoys access over the registered common is not within the scope of this advice but it is perhaps worth

mentioning that the rights of the public in relation to access land under the Countryside and Rights of Way Act 2000, Pt.1, are subject to the exceptions contained in Sch.1 to that Act of which those mentioned in para 2 (land covered by buildings or within the curtilage of such land) and para 4 (land used as a park or garden) would no doubt be of interest to the landowner.

The legal framework

8. It was a deficiency of the 1965 Act that registrations of common land and common rights could become final by default even though the land was never common land or the rights never existed. Furthermore, regulations made under the 1965 Act did not even provide for sufficient notification to the public of applications made for provisional registration of common land and rights of common. This meant that many provisional registrations became final without objection and thus without any independent review of the original application. The Court of Appeal has found (*Corpus Christi College v Gloucestershire CC* [1982] 3 All ER 995) that the 1965 Act provided no mechanism to enable land to be removed from the register once the registration became final even where the land had clearly been wrongly registered as common land. The likelihood of this happening was exacerbated by the fact that there was no provision for notifying the landowner that an application for registration had been made. Particular problems arose when registration included back gardens or even buildings, as arises in this instance. The result was that although the 1965 Act made provision for alteration of the register arising from events occurring after 1970, no such provision was made to overcome mistakes made in the course of the original registration process.
9. Provision for rectifying registers (i.e. de-registration) was initially made in the Common Land (Rectification of Registers) Act 1989, but the Act only applied in the case of land on which there was a dwelling-house or land which was ancillary to a dwelling-house. For the purposes of the 1989 Act, land ancillary to a dwelling-house was taken to mean a garden, private garage or outbuildings used and enjoyed with the dwelling (s.1(3)). There are two useful authorities on the 1989 Act (under which any application had to be made by

mid-1992), namely *Cresstock Investments Ltd v Commons Commissioner* [1992] 1 WLR 1088, and *Re Land at Freshfields* (1993) 66 P&CR 9.

10. It is plain from these cases that the expressions used in the 1998 Act were to be construed liberally having regard to the purposes of the Act which was the remedying of inadvertent expropriation or dedication of public use. So it was that in *Cresstock* a registration was cancelled in the case of a little over an acre of garden land which was found to be overgrown woodland which was quite separate from the dwelling which was surrounded by a well-cultivated lawn and flower beds. The view taken was that the fact that ownership of the land had passed with the house since 1933 raised a presumption that the land was ancillary to the house as part of its garden and there was no evidence to rebut that presumption. Although it is quite true that we are dealing, in this instance, with a substantial residence dating from a period when large gardens were commoner than they are today, Judge Paul Baker QC in *Cresstock* on p.1093 at C, noted

that it may be that the grounds associated and held with a house are so extensive that they could not be said to be ancillary to it.

The *Freshfields'* case involved two fields (which had been used at times for cattle grazing or the growing of hay) adjoining the applicant's home but separated from it by a high and overgrown hedge. The Commissioner and, on appeal, the court ruled that the fields could not be described as a garden within the meaning of s.1(3) of the 1989 Act.

11. One then turns to the Planning (Listed Buildings and Conservation Areas) Act 1990 which, at s.1(5)(b), extends the meaning of a listed building to '*any object or structure within the curtilage of a building which, although not fixed to the building, forms part of the land and has done so since before July 1, 1948 ..*'. In *AG, ex rel. Sutcliffe v Calderdale BC* [1983] JPL 310, the Court of Appeal held that a terrace of cottages which had been constructed as mill-workers' dwellings adjacent to, and linked by a bridge to, a mill which was now a listed building, was within the curtilage of the mill and thus included in the listing by virtue of s.1(5). In *Morris v Wrexham County Borough Council* [2002] 2 P&CR 7 the High Court derived from the various authorities the

principle that building A is within the curtilage of building B if (a) the buildings are sufficiently close and accessible to one another; and (b) in terms of function, building A is ancillary to building B. In the same year the Court of Appeal ruled in *Skerrits of Nottingham Ltd v SSETR* [2000] 2 PLR 102, that it was not an essential feature of a curtilage that it be small, and that in the context of the 1990 Act, the curtilage of a substantial listed building was likely to extend to what were, or had been, in terms of ownership and function, ancillary buildings (such as, for instance, stabling and associated buildings within a courtyard or other outbuildings near the main house and might even extend to statues in a closely managed garden or terrace). Accordingly, in *Skerrits* the Court of Appeal ruled that a stable block some 200m away from the listed building fell within the curtilage of that property.

12. In *Challenge Fencing Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EHC 553 (Admin) (which concerned a decision by an inspector on the scope of an industrial building in the context of permitted development under Pt.7, Class J) the court summarised the applicable principles (as set out below) when determining the extent of the curtilage of a building.
 - (a) The extent of the curtilage was a question of fact and degree.
 - (b) The physical layout and the past and present ownership and use of the land or buildings had to be taken into account.
 - (c) The relative sizes of the building and its claimed curtilage were relevant.
 - (d) Whether, in terms of ownership and use, the building or land within the claimed curtilage was ancillary to the main building was relevant.
 - (e) The degree to which the building and the claimed curtilage fell within one enclosure was relevant.

(f) The relevant date on which to determine the extent of the curtilage was the date of the relevant application, having regard to the past history of the site and its use at the time of the application.

13. It is then plain that whether a piece of land falls within the curtilage of a building involves considerations of physical layout, scale, evidence of the nature of the historic uses of the site and of how the use of the main building related to the surrounding area. It is also worth noting that the grounds held with a house may be so extensive (and especially if such land is also unmanaged) that, in terms of function, they could not be said to be ancillary to the main building. Moreover, the fact that the wider estate may be held within the same title as the land nearer the main building will of itself never be enough.

The site

14. On 16 October 2019 I visited the site accompanied by officers of the CRA, Mr Richard Turner and his barrister, Paul Wilmshurst. It was disappointing that neither of the objectors (namely Hugh Craddock on behalf the Open Spaces Society and Steve Byrne whom I note lives in Lancashire) felt able to attend the site visit which was extremely informative. I also took a number of photos which has enabled me to refresh my memory of my visit.
15. Having started off in front of the main house the group walked in a westerly direction on what is a sloping site. The areas on either side of the house consist of managed garden and general open space within which there are a number of mature trees and obviously comprises part of the immediate curtilage of the main house. On the plan at Appendix 1 there is a line running inwards from the edge of the southern boundary. Roughly half way along this line one finds some steps (albeit taken over by a good deal of plants and soil after years of neglect) which allows one to move to a lower level where one could see the remnants of what is likely to have been an ornamental wall running in a straight line to the southern boundary, as is depicted on the plan at Appendix 1. At its southern end there were some abandoned railings and features on the ground which, before the onset of fencing and a recently

planted hedgerow along The Hallams' southern boundary by As neighbour, would have looked out on a picturesque view over a verdant valley landscape.

16. The remnants of the wall to the south of the steps were more evident than to the north and we found no trace of the dogleg shown on the plan where the southerly line ends on the plan at Appendix 1. There is, of course, no line at all on the plan connecting the two linear lines to the north of the main house and the alignment shown on the plan at Appendix 2 is obviously one of convenience but is, I think, amply justified in practice to show where the westerly curtilage is likely to have ended in the gap between the lines shown on the plan.
17. To the west of the claimed curtilage boundary the land slopes away in a landscape which appeared to me to comprise of mainly impenetrable scrub and woodland.¹ On the western side of the main house the AL is intended to align with the linear or feature lines shown on the southern and northern sides of the main building on both plans. It is, I think, reasonable to assume that at one time an ornamental wall (or something like it) and steps comprised the line running into the site from the southern boundary and that the same or another similar feature might well have been sited on the ground on the linear lines shown on the northern side, the second of which cuts back towards the main driveway. It seems probable to me that this would have been the case from which it follows that the land to the east of these lines would, at one time, have represented the extent of the managed garden on the western side of the property.
18. Despite our best efforts to find some evidence of what these northern lines represented on the ground, the land was far too overgrown to find anything of interest. We did though see a small levelled off area in the approximate location of the square structure shown on the plan in the gap between the linear lines. Clearly the managed open space on both sides of the main house will have shrunk over the years but I think this is only to be expected. There

¹ In a letter written to the CRA by As solicitors dated 9 January 2020 they were informed that *'the composition and nature of the new growth in the woodland is pioneer species that are highly invasive and vigorous in growth. The barriers of bramble, gorse and nettle have been created in a matter of a couple of years (see paragraph 10 of the Statutory Declaration of Carol Collins and paragraph 9 of the Statutory Declaration of Darren Osborne)'*.

was, however, some evidence of active management in the gap between the northern edge of the open space on the northern side of the main house and the AL boundary on this side.

19. One further thing that should be mentioned is that the previous access into The Hallams would have been roughly via the western edge of the AL through a gateway sited roughly due north of the junction of the two northern linear lines on the edge of the site on the Appendix 1 plan. This is a sloped area and one can see why the route of the driveway probably had to be changed.

The expert evidence put in by the applicants

20. The boundaries of the AL derive from the conclusions of Adrian Parry (acting for a body known as Heritage Collective) who is a heritage consultant who investigated the building curtilage in his report dated 28 May 2019. This report superseded an earlier report on the building curtilage produced by Louise Ryan (for RPS CgMs) in April 2016 where the view taken by her was that the whole of the applicants' freehold estate, namely as shown on the plan in App/1, comprised the building curtilage. In other words, that it comprised not only the land and buildings within the applicants' title but also the unmanaged woodland to the west of the AL. As it seems to me that such a conclusion was obviously open to question and is no longer relied on by As, I recommend that the CRA should agree to an alteration of the extent of the claimed AL from that relied on when the application was first made and my report is prepared on this basis.
21. The past history of the site is of assistance in arriving at a determination of the current building curtilage. It is known that The Hallams was built in 1894-95 on land that was a mixture of woodland and heathland. The Figure 2 print in Mr Parry's report (this is the 1910 Finance Map survey) shows us that the main house had by then clearly defined laid out gardens to the front and rear. It also shows that there is a broad equivalence with the boundaries shown on the AL with the gap between the end of the structure running in from the southern boundary and the linear lines on the northern side coinciding with the edge of the driveway which used to exist on this side of The Hallams (see

Figure 2 at Appendix 3). It is plain that the garden curtilage surrounding the main house in 1910 is quite distinct from the woodland beyond with the border between the two being, in all likelihood, defined by boundary walls of some description of which there are only few remnants. The remains of the structure running in from the southern boundary and its location on an OS map dating back to a survey carried out in 1913 is shown within Figures 4 and 5 of Mr Parry's report which will be found at Appendix 4.

22. It is stated in Louise Ryan's report that the estate was broken up by sales in 1929 and 1951. The plan attached to the conveyance accompanying the 1951 sub-division will be found at Appendix 5 where the darker land, representing the house and gardens, was sold separately to the green land which eventually became Hallams Court. It is clearly relevant that the unmanaged woodland on the west was excluded from the sale plot comprising the main house and surrounding garden land. It is also worthy of note that the conveyance plan shows that the purchase land was slightly set back from the AL western boundary. There is also a 'T' mark indicating the presence of a fencing covenant operating on the owner of the retained woodland which was excluded from the sale.
23. It is Mr Parry's view that the true curtilage of The Hallams is the land shaded blue on the plan at his Figure 7 which will be found in Appendix 6 and is the basis for the AL shown in Appendix 2. Clearly it excludes the unmanaged woodland to the north and west of the main house.

Other evidence advanced by the applicants

24. The applicants' solicitors, DMH Stallard LLP, have supplied the CRA with detailed submissions dated 29 November 2019 in support of the application. I have found these very helpful and they are intended to supersede the submissions of the same solicitors dated 16 May 2016.

25. These solicitors state as follows:

19. We distinguish the Application Land² into three areas:

a. the building;

b. the formal garden (which also includes access, parking areas and ancillary buildings); and

c. the woodland.

20. In line with the Stephenson factors,³ the physical layout, use and function of the areas of the Application Land is presented in the additional evidence referred to below.

Statutory Declarations

21. The applicants have provided the following Statutory Declarations⁴ which set out the layout, use and function of the areas of the Application Land over the period of 1979 to present:

a. Dominic Bateman, owner and property manager between 1979 and 2006 – copy at Appendix 5;

b. Darren Osborne, gardener since 1986 – copy at Appendix 6;

c. Carol Collins, owner and occupier since July 2013 – copy at Appendix 7; and

d. Richard Turner, owner and occupier since July 2013 – copy at Appendix 8.

Dominic Bateman

22. The Statutory Declaration of Dominic Bateman covers the period 1979 to 2006, during which time the Application Land was used by Batemans Opticians as its head office. Mr Bateman was the Property Manager, Property Director and Estates' Director with responsibility for all estates' matters.

23. Mr Bateman identifies the presence of the building and distinguishes the Application Land between building, formal garden (and main access/parking) and woodland throughout the period of his knowledge.

24. The main access is marked in yellow and the car parking area in orange on his plan. A second access is also noted.

25. Mr Bateman's recollection as to the extent of the formal garden is as shown edged in green on his plan. This area comprised flower beds, shrubs, ornamental trees, picnic tables, swimming pool, changing rooms and artists studio.

² The application land is a reference to the whole of the land comprised within As ownership and is shown on the plan at Appendix 1.

³ See *AG, ex rel Sutcliffe v Calderdale BC* (1982) 46 P&CR 399 at 407, per Stephenson LJ.

⁴ As solicitors also say in their letter dated 9 January 2020 that the witness evidence 'provided in the form of sworn statements and the veracity of the Statutory Declarations of Dominic Bateman and Darren Osborne should be given weight accordingly'.

26. *The woodland is confirmed as having been used for recreational walking through pathways.*

27. *Mr Bateman recollects that the western boundary where the formal garden meets the woodland (shown edged in brown on his plan) was distinguished by a metal/iron fence running from north to south.*

28. *Mr Bateman confirms that the extent of the Application Land was the enclosed boundary throughout his knowledge.*

Darren Osborne

29. *The Statutory Declaration of Darren Osborne (gardener for the Application Land since 1986 to present) confirms his recollection as to the presence of the main building throughout the period of his knowledge.*

30. *Mr Osborne distinguishes the rest of the Application Land between formal (or "ornamental") garden and woodland.*

31. *In respect of the formal garden area, which Mr Osborne identifies by a green line including flower beds, ornamental lawns and shrubberies as present since 1986. He confirms the presence of the parking and main access within this throughout the period of his knowledge. Mr Osborne also identifies a number of features within this area of the Application Land as having been present but removed (swimming pool, changing room, art studio, water tanks). Greenhouses and sheds are confirmed as having been present (and some still present) within the formal garden area throughout the period of his knowledge.*

32. *Mr Osborne describes the woodland surrounding the garden and the two accesses therein, one which is still used and the other which was used until 2006. The use of the woodland is explained as having been for recreation during the period of the Batemans ownership, containing maintained walkways.*

33. *In respect of the extent of where the formal garden begins and ends, Mr Osborne recollects that there were railings running north to south along the line shown in red on his plan. These railings were removed and the path which remained alongside it only became overgrown in the last couple of years.*

34. *Mr Osborne confirms that the extent of the Application Land was the enclosed boundary of the property throughout the period of his knowledge.*

Carol Collins

35. *The Statutory Declaration of Carol Collins covers the period of 2013 to present, throughout which Ms Collins has lived at the Application Land with Mr Turner and their family.*

36. *Ms Collins also identifies the presence of the building throughout this period and distinguishes between building, formal garden, main access/parking, and woodland.*

37. *The garages, access and hardstanding are identified on Ms Collins' plan as having been present throughout her knowledge of the Application Land.*

38. *The presence of many typical garden features and paraphernalia are confirmed as present and having been present within the formal garden edged in green on Ms*

Collins' plan. These include sheds, greenhouses, play areas, compost and planting. Ms Collins confirms this area is used as a garden and contains grassed lawns, ornamental trees and bushes.

39. The woodland is shown edged in brown on Ms Collins' plan, which has been and is used as a garden for walking and playing with features such as feature trees, ornamental rhododendrons and a stone bench. An additional access is identified and confirmed as having been used as a driveway for a period.

40. Ms Collins points out the steps to the western edge of the formal garden, where this meets the woodland. Ms Collin notes that some areas have become overgrown only in the last couple of years within the formal garden.

41. Ms Collins confirms that the extent of the Application Land was the enclosed boundary throughout the period of her knowledge.

Richard Turner

42. The Statutory Declaration of Richard Turner covers the period of 2013 to present, throughout which Mr Turner has lived at the Application Land with Ms Collins and their family.

43. Mr Turner makes a distinction between the formal garden and the woodland.

44. The formal garden is identified as edged in red on his plan, including the garages, sheds and greenhouses. The use of the formal garden is helpfully described and includes normal garden activities, such as sitting out, tending to plants, vegetables and chickens, playing games as well as parties.

45. Mr Turner identifies the main driveway and car parking areas as present throughout the period of his knowledge.

46. Mr Turner identifies an additional access which leads to the main car parking area to the north of the building, identified in green on his plan and which also leads on as a footway to the steps at the southern lawn.

47. At the north-west corner of the building is an area of large planting, next to the car parking area. On this area, temporary electricity generators have been placed over the years when needed due to frequent power cuts.

48. The woodland is shown as the land outside of the formal garden area which includes an electricity supply pole. Mr Turner confirms that he regularly walked the woodland with his dog prior to 2017.

49. As to the extent of the formal garden, Mr Turner refers to the driveway and path separating the formal garden and the woodlands. Along this line he refers to buried brickwork which he considers must have been the foundations of the railings referred to by Mr Bateman and Mr Osborne.

50. Mr Turner confirms that the extent of the Application Land was the enclosed boundary throughout his knowledge.

Historic photographs

51. At Appendices 9-11, we enclose historic photographs of a sunken garden which was situated to the south-east of the main building.

52. The applicants believe these photographs were taken between 1950-1970s.

53. The photographs were passed to the applicants from the Merritt family who owned and occupied the Application Land prior to the Batemans.

54. The applicants understand that the sunken garden was removed at some point for the Batemans due to the high level of maintenance required and incompatibility with an office use.

Aerial photographs

55. Our client has obtained two aerial photographs which do assist in identifying the features at the Application Land throughout the relevant period.

1969

56. At Appendix 12, we enclose an aerial photograph taken on 29 October 1969. This is one year after the provisional registration of the Application Land.

57. The building is clearly present along with the hardstanding parking area and main access to its north. The formal garden includes the lawns and sunken garden. Clearly present is the large area of ornamental planting to the northwest of the main building (where it meets the parking area).

1988

58. At Appendix 13, we enclose an aerial photograph taken on 7 August 1988.

59. As in the 1969 photograph, the building is clearly present along with the hardstanding parking area and main access to its north. The formal garden includes the lawns but the sunken garden has been removed and laid to lawn. Clearly present is the large area of ornamental planting to the northwest of the main building (where it meets the parking area).

60. The features appear to be the same as those identified by Mr Bateman, Mr Osborne, Ms Collins and Mr Turner. It can be concluded that the extent of building, formal garden (including parking and main access) and woodland has remained the same since the aerial photograph of 1969.

Documentary evidence

2013 sales particulars

61. At Appendix 14, we enclose a copy of the 2013 sales particulars for the property which helpfully include a number of photographs of the formal garden.

62. On the front page and the fifth page are photographs of the front elevation of the main building (the photographs are taken facing south), showing the substantial parking area to the immediate north of the building and large planting area to the north-west of the building (referred to by Mr Turner and visible from the aerial photographs).

63. On the second page is a photograph from the southern lawn (the photograph is taken facing south), showing part of the south of the formal garden.

64. On the third page is a photograph from the southern lawn (the photograph is taken facing south), showing part of the south of the formal garden where the boundary escapes further south-west into an area of planting which is considered by the makers of the Statutory Declarations to comprise formal garden rather than woodland.

65. On the fourth page is a photograph of the main access, showing iron gates and substantial planting and line of trees alongside this.

66. On the tenth page are three photographs. The photograph at the top right shows the southern lawn of the formal garden and area of planting to the south-west referred to in paragraph 63 above. The photograph on the bottom right shows the access driveway and substantial planting and trees alongside it. The photograph on the bottom left appears to be taken within the woodland.

67. On the twelfth page is a photograph of the rear elevation of the building (the photograph is taken facing north), showing the southern lawn of the formal garden.

OS maps

68. At Appendix 4, we enclose a copy of CgMs' report of 2016. This contains a number of OS maps.

69. At Figure 6 of the report, the 1961 map clearly shows the presence of the main building, parking area to the immediate north and planting to the north-east of the main building. The main access is also visible. Demarcations around the main building seem to indicate the lawn and planting to the north of the main building as laid out in a formal garden style. Similarly, the lawn and planting to the south of the main building (as well as the steps and viewing platform) also suggest that this would have been used as a formal garden.

70. At figure 7 of the report, the 1971-74 map clearly shows the presence of the same features as those in the 1961 map. The other access through the woodland present on the 1961 map is not shown on the 1971-74 map.

71. At figure 8 of the report, the 1988-89 map shows the presence of the same features as the 1971-74 map. There is an additional road laid out to the east of the main building (not within the extent of the commons registration and therefore not within the extent of the Application Land).

Summary

72. In respect of the main building known as The Hallams, every OS map, aerial photograph and statutory declaration confirms the presence of the building throughout the relevant period of 24 September 1968 to present. Clearly, the requirements of paragraph 6(2)(b) and (d) have been met in respect of the building and there can be no uncertainty in respect of this.

73. The entire Application Land has comprised formal garden (including parking and access) and woodland throughout the relevant period of 24 September 1968 to present.

74. Applying the Stephenson [test] to determine the extent of the curtilage of the main building:

Physical layout

75. It has been demonstrated through a review of the historical maps, aerial photography and witness evidence that the Application Land was and still is enclosed with the main building and used in conjunction with it. This is relevant as set out at paragraph 18(v) of Challenge Fencing.

76. The Deregistration Land⁵ immediately surrounds the main building and excludes the woodland to the west.

77. The Deregistration Land includes the main access road and parking area immediately to the north of the main building. This is identifiable in every OS map, aerial photograph and statutory declaration confirms the presence of the building throughout the relevant period of 24 September 1968 to present.

78. The Deregistration Land includes the formal or “ornamental” garden which comprised and still comprises lawns, flower beds, trees and planting.

79. The formal garden was bounded by railings to the western site of the building where it meets the woodland (which is outside of the Deregistration Land but within the Application Land). These railings are referred to by Mr Bateman and Mr Osborne (although Mr Osborne’s northern line follows farther west than Mr Bateman. Surrey County Council should note that the Deregistration Land is proposed to be the narrower line set out by Mr Bateman). The brick wall base of the railings is visible in some places along that boundary which follows north to south, with steps present in the southern part.

80. Mr Osborne and Mr Turner both refer to a pathway running along this line, where the formal garden meets the woodland. Although Mr Osborne’s northern line follows farther west than Mr Turner, Surrey County Council should note that the Deregistration Land is proposed to be the narrower line set out by Mr Turner (which also accords with Mr Bateman’s recollection).

81. Within the formal garden within the Deregistration Land [there] were (and still are) ancillary garden buildings including sheds and greenhouses. These are identified by Mr Osborne, Mr Turner and Ms Collins. Typical garden paraphernalia including children’s play equipment and seating areas are also identified within the formal garden included within the Deregistration Land.

82. In the earlier part of the relevant period, the formal garden within the Deregistration Land included the water tanks, sunken garden, art studio, changing room and swimming pool. These have over time been removed and laid over to lawn used as part of the garden activities of the occupiers from time to time.

83. During the Batemans’ time, many picnic benches were set out on the formal garden lawns and used by members of staff.

84. The extent of formal garden is not unusual when considering the size of the main building itself. The main building known as the Hallams is 15,000 sq feet. It currently

⁵ This is the land shown hatched blue on the plan in Appendix 2.

has 11 bathrooms and a larger number of bedrooms, having been built in 1895 as the principal residence of a 147 acre estate including stables, coach house and a number of ancillary cottages. The relative size between the claimed curtilage and the building is a relevant consideration as identified by paragraph 18(iii) of the Challenge Fencing decision.

85. The woodland (outside of the Deregistration Land but within the Application Land) lies further to the west of the main building and was separated by railings during part of the relevant period. The pathway along the boundary between the woodland and the formal garden has been present throughout but become overgrown in the last couple of years only.

Ownership past and present

86. The Application Land (including the Deregistration Land) has passed ownership over the years, but as a whole parcel throughout the period relevant in this application (September 1968 to present).

Use or function of the land and buildings, past and present

87. The main building known as The Hallams has been used as a residence or office throughout the relevant period.

88. The main access and parking area have clearly been used in conjunction with the use of the main building as such, as the only areas of access and hardstanding at the Application Land.

89. The formal garden (within the Deregistration Land) have been used as a garden for the main building. These contained and do still contain sheds, greenhouses, planting and garden paraphernalia. Many picnic benches were once present, along with the sunken garden, art studio, changing rooms and swimming pool. They were separated by the railings and a pathway between the west boundary of the formal garden and the east boundary of the woodland. The statutory declarations demonstrate that they have been used for gardening, sitting out, playing, walking and events.

90. The woodland (outside of the Deregistration Land but within the Application Land) has been used during the time of the Batemans for enjoying the walkways and has been used by the applicants for walking and playing.

Conclusion

91. On the basis of the evidence provided, it is clear that the Deregistration Land meets the statutory tests for deregistration under this application. The Deregistration Land has been since 24 September 1968 to present date covered by a building and its curtilage. This should be removed from the register of common land.

92. On the basis of the evidence provided, the woodland (being the area of the Application Land not contained within the Deregistration Land) meets some of the criteria of curtilage and Surrey County Council is asked to make a determination in respect of this.

93. Please do not hesitate to contact Chloe Karamian should there be any further queries.

26. I have set out at these submissions in full as I could not do them proper justice by providing merely a short précis. It will also be observed that the CRA is being asked to consider whether the unmanaged woodland to the west of the AL falls within the building curtilage of The Hallams. The application to de-register does not, however, relate to this area which will, in any event, continue to be registered common land.
27. If it assists, my preliminary view about this is that as this area of scrub and mainly impenetrable woodland, somewhat distant from the main house, has little or no functional connection with the AL, I fail to see how it could sensibly be said to fall within what one might regard as the building curtilage. However, if an application were made to de-register the woodland then it would be my recommendation that there should be a non-statutory inquiry as I have noted concerns about the quality of the evidence advanced in relation to the woodland which would, I think, need to be tested by oral evidence. In the circumstances, whilst it would admittedly be useful to clarify, once and for all, the status of the woodland I am disinclined to recommend to the CRA that it should do so on the basis of the evidence presented to the CRA. The sensible course is, I think, to allow the amendment and to deal with the application in its amended form and to leave it to As to pursue a further application in relation to the woodland if they are minded to do so. I am loath to say any more at this stage about the status of the unmanaged woodland although I have considered it reasonable to offer a preliminary view about this and, of course, there are obvious implications which may be derived from my findings on the amended application.
28. I was particularly interested in the statutory declaration of Dominic Bateman dated 27 November 2019 who was responsible for The Hallams in the period 1979-2006 when it was held by trustees of the GC Bateman pension scheme. It is his evidence that the boundaries of the land comprising the AL represented the extent of the managed garden (which clearly rings true) although the woodland area to the west was, as he claims, maintained and accommodated numerous paths for those to walk on and enjoy the trees. I find this evidence difficult to accept as the area I saw has probably not been

managed for a great many years, nor were there any paths that I could see, nor were any pointed out to me.

29. Darren Osborne tells us in his statutory declaration dated 26 November 2019 that he has been a part-time gardener at The Hallams since 1986. He says that the managed or ornamental garden around the main house is shown by the green line on the plan attached to his statement which, though slightly wider on the western side, coincides roughly in its shape with the AL. He also says that the ornamental garden was bordered on its western side by four foot high railings running between the steps on the southern boundary and a point quite close to the north-west corner of the AL. This is the red line shown on his plan which will be found at Appendix 7. I saw none of this when I visited the site, even though we walked within the same area, although there were, as I have already indicated, some old steps at one place on the western side enabling walkers to walk between the higher and lower levels on the edge of the managed area.
30. Mr Osborne also says that he has maintained the woodland area to the west of the green edging. He refers to walkways (which were evidently used by Bateman employees) and the planting of new species of trees and rhododendrons, none of which I observed or were pointed out to me on my visit. Nor could I visualise the second of the two red lines which is claimed to represent an access (presumably on foot) between the main building and the northern edge of the property. Despite my concerns about elements of Mr Osborn's evidence, it is beyond doubt that the AL would have been a coherent curtilage of the main building in terms of its function as closely managed garden land.
31. The statutory declaration of Carol Collins dated 25 November 2019 gives us more of the history of the property. The plan attached to her statement tells us that the AL is (with other land outside the registered common on the eastern side) the managed area surrounding the main house (which I saw for myself) and that the woodland on the western side is, as she says, used 'as a garden for walking and playing'. Such evidence concerns me as this area consists of largely of impenetrable scrub and unmanaged woodland (I might add that it

was not my impression that the undergrowth within the woodland area was of recent origin or else had been deliberately laid out in this way, nor were these facts pointed out to me on my visit). It was not suggested to me by Mr Turner either that the area was in regular use for walks. Nor do I recall the 'old stone bench' mentioned by Carol Collins in paragraph 11 of her statutory declaration being pointed out to me on site and, in all probability, I would have taken a photograph of this feature if it had been.⁶ Her plan helpfully locates the steps already mentioned and this is why I am including it at Appendix 8.

32. In his statutory declaration dated 27 November 2019 Richard Turner has marked out in red what he describes as 'the formal gardens' (which are undoubtedly well used by the family) which aligns with the AL and is consistent with what I myself observed on my visit to the site. Mr Turner also tells us that on the western side of the green area there used to be a vehicular track running in from a 5-bar gate on the northern boundary to the main house. I recall this access but it is unclear to me how this track could ever have been successfully used as an alternative access to the main house. In dealing with the steps (which he too depicts on his plan), he tells us that there is a pathway which leads down to a possible viewing area looking out over the valley which I recall we discussed on site. He also deals with the remnants of the brickwork running north from the southern boundary which he thinks represent the foundations for railings that ran alongside the pathway but which were not present when they moved in. There were admittedly some railings stacked near the steps but the evidence goes no further than this. It is though probable that there would have been an attractive path leading from the steps to the edge of the boundary on its southern side. The plan produced by Mr Turner is to be found at Appendix 9.

The objections

33. The OSS originally objected as they considered that the application land in its initial form (see plan at Appendix 1) included extensive areas of scrub and

⁶ Neither of the officers who attended the site visit could recall seeing a stone bench although one of them referred in her notes to a 'stone seat' marked in the northern area of the western boundary of the AL. However, she cannot recall whether they actually saw this feature or were just told that there had been a stone seat in the past.

woodland and went well beyond the building curtilage for present purposes such that it could not be regarded as part of the garden of The Hallams. Mr Craddock (who is a Case Officer for the OSS) also goes into the law in his helpful email dated 12 September 2016. He puts the OSS's case in this way:

The land cannot be regarded as part of the garden of The Hallams, but more as a wilderness, and a buffer between Littleford Lane and the publicly accessible heath to the north, and the house and gardens. While the land is indisputably owned by the owners of The Hallams, that does not make it 'intimately associated' with the house and gardens, but a useful adjunct to it. It is certainly not some 'small area' which serves a purpose of The Hallams in a 'necessary or useful way'. Even if the wilderness area were to now be considered to be part of the extended garden of The Hallams (and we do not accept that it is), we understand that The Hallams was formally, until 2006, occupied as offices, and suggest that the wilderness was even less likely to form part of the garden of an office.

... The wilderness area is not part of the curtilage for the purposes of the relevant test, and the application should be refused as regards that area ...

For the avoidance of doubt, we have no objection to the application being granted in relation to the buildings contained within the application area, and the gardens, yards and other immediately ancillary land to them.

34. So far as is material, Mr Byrne's objection (and his objection statement is dated 9 August 2016) is, as I understand it, similarly based on the premise that the building curtilage of The Hallams would not extend to the unmanaged woodland. In his email to the CRA dated 6 June 2019 he puts it in this way:

The curtilage of a building is something rather different from the gardens and woodlands which provide the setting for a large country house; or the grounds, parks and estates surrounding such a house

*... in such a case as the present one, wouldn't it be truer to say that – apart from a metalled area immediately adjacent to the front and sides, and probably a ha-ha at the back – a house of this kind **does not have** a curtilage because it enjoys a setting which **obviates the need** for a curtilage?*

Conclusion

35. I am satisfied that the AL is the proper building curtilage of The Hallams. It represents the historic garden curtilage and even today this is the area which can sensibly be said to be ancillary to the main house.
36. The land to the west of the AL is, as Mr Craddock rightly says, more of a wilderness and a buffer between Littleford Lane and the publicly accessible heath to the north, and the main house and gardens. For one thing, the nature of its use is quite different and, for another, the area up to the Littleford Lane is, as it seems to me, physically remote from the AL. It is not as if such land is even necessary or useful to the main house and surrounding garden curtilage. For instance, it is not as if we are dealing with stabling and associated buildings within a courtyard or other outbuildings near the main house where, in terms of function, there would be an obvious association with the main house (see *Skerrits*).
37. Accordingly, it is my recommendation to the CRA that the application to de-register the land shown hatched blue on the plan at Appendix 2 is justified on the evidence presented by As and on the basis of my own inspection of the site. It follows that the commons registration within reference CL 435 should be adjusted by the removal of such land from the registration.

William Webster

3 Paper Buildings

TEMPLE

Inspector

20 January 2020

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