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Commons Registration Officer
Surrey County Council

By email only: Helen.Gilbert@surreycc.gov.uk

Date 29 November 2019
Your ref IGT/HGG/App1876
Our ref A13/297874-1

Dear Sirs

**Application to remove The Hallams, Littleford Lane, Blackheath, Nr Guildford from the Register of Common Land CL 435
Application No. 1876**

1. We write further to the site visit of 16 October whereupon it was agreed that our clients (the applicants) would be permitted to submit further evidence in support of their application.

Introduction

2. The application relates to the land hatched in blue on the plan at Appendix 1, originally submitted with this application on 16 May 2016. We refer to this land as "the Application Land" in this letter.
3. Further to the opinion of Surrey County Council's Counsel of 17 October 2017, we submitted the report of The Heritage Collective dated 28 May 2019 which identified a lesser area for de-registration pursuant to this application. A copy is at Appendix 2. This was submitted without prejudice to our position as to the wider area of the Application Land (i.e. the woodland).
4. Surrey County Council should note that the applicants' position is that the area of the Application Land shaded blue (where it falls within the common land registration) as shown on figure 7 of The Heritage Collective Report dated 28 May 2019 should certainly be de-registered as a result of this application. This area is supported for de-registration through the expert evidence and further evidence (set out below). For ease of reference, we have prepared a plan showing this area hatched blue on the plan at Appendix 3. We refer to this land as "the Deregistration Land" in this letter.

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5. This letter and further evidence provided herewith demonstrates that the Deregistration Land has since 24 September 1968 been (and still is) covered by a building and the curtilage of a building. On this basis, the application should be acceded in respect of the Deregistration Land as a minimum. The applicants request that Surrey County Council make that determination in respect of the application.
6. Surrey County Council are to make a determination on the woodland (being the area between the Deregistration Land and the Application Land) and whether they consider this to also comprise curtilage.

Legal tests

7. This application is made pursuant to paragraph 6 of Schedule 2 of the Commons Act 2006, which states:

Buildings registered as common land

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- (1) *If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.*
- (2) *This paragraph applies to land where—*
 - (a) *the land was provisionally registered as common land under section 4 of the 1965 Act;*
 - (b) *on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
 - (c) *the provisional registration became final; and*
 - (d) *since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*
- (3) *A commons registration authority may only remove land under sub-paragraph*
 - (1) *acting on—*
 - (a) *the application of any person made before such date as regulations may specify; or*
 - (b) *a proposal made and published by the authority before such date as regulations may specify.*

8. It is clear from the Register of Common Land (CL435) that paragraphs 6(2)(a) and (c) have been satisfied.
9. The Application Land was provisionally registered as common land on 24 September 1968. The evidence submitted to date and further evidence (explained below) demonstrates that as a minimum the Deregistration Land was and since then has at all times been covered by a building or within the curtilage of a building.
10. It is clear from the OS maps provided in the CgMs report dated April 2016, that the main building (the residence known as The Hallams) has been present throughout the relevant period. A copy of this report is at Appendix 4.
11. The issue which has been raised by the objectors, and subsequently Surrey County Council, in this case is the extent of the curtilage of the main building throughout the relevant period.
12. As identified at paragraph 3 of the opinion of William Webster dated 8 August 2019, the comment from The Open Spaces Society dated 4 July 2019 suggests that they have no objection to de-registration of the extent of Deregistration Land (their concerns mainly relate to Surrey County Council determining the application in respect of the whole Application Site, which we have no objection to). Their further comment of 12 August states that they “have no wish to pronounce on the correctness of the identification of curtilage by the applicant’s advisors”.
13. The latest comments from Mr Byrne dated 6 June 2019 suggest that the main building does not have a curtilage due to its large size and setting which obviates the need for a curtilage. Upon request for further clarification, none has been forthcoming in his email of 13 August 2019. We can find no basis in law for Mr Byrne’s position.
14. We note that neither objector has attended the Application Land.
15. Our email of 17 July 2019 briefly deals with the comment from Mr Byrne suggesting that The Hallams does not have a curtilage. This letter (and supporting evidence provided herewith) further supports the applicants’ case that the main building known as The Hallams does have a curtilage. The extent of this curtilage (and buildings therein) is shown hatched in blue on the plan at Appendix 3 and comprises the Deregistration Land as a minimum.

16. A curtilage is typically accepted to be an area of land attached to a building and forming one enclosure with it. Whilst there is no statutory definition of "curtilage", case law has established the appropriate considerations and legal tests to be applied in determining the extent of curtilage of a building.
17. The recent case of *Challenge Fencing Limited v Secretary of State* 2019 EWHC 553 (Admin) relates to a challenge to the decision of a Planning Inspector in determining the extent of curtilage of an industrial/warehouse building in the context of a dispute around permitted development rights. Very helpfully, in this recent decision the High Court sets out pertinent case law on curtilage and a summary of the relevant tests:

"10. There is extensive caselaw on the legal approach to the decision as to what is the curtilage of a building. Most if not all of this caselaw concerns the curtilage of listed buildings, and to the degree that slightly varied considerations may be in play when considering the curtilage of an industrial building for the purposes of the GPDO, I will deal with this below.

11. In Att-Gen ex rel Sutcliffe v Calderdale BC (1982) 46 P. & C.R. 399 at 407, Stephenson LJ identified three factors which must be taken into account in determining what constitutes the "curtilage" of a building in any given case:

"Three factors have to be taken into account in deciding whether a structure (or object) is within the curtilage of a listed building ... whatever may be the strict conveyancing interpretation of the ancient and somewhat obscure word 'curtilage'. They are (1) the physical 'layout' of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage."

12. Lord Donaldson MR explained the approach to be taken to curtilage in Dyer v Dorset CC [1989] 1 Q.B. 346 at 355B:

"The question of determining the extent of the curtilage] is a question of fact and degree and thus primarily a matter for the trial judge, provided that he has correctly directed himself on the meaning of 'curtilage' in its statutory context."

13. At 358B–G in Dyer , Nourse LJ further discussed the meaning of curtilage by reference to the Oxford English Dictionary definition:

"A small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its outbuildings."

14. He then accepted the proposition drawn from the authorities that "an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached" (358D–E).

15. In *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2001] Q.B. 59; [2000] J.P.L. 789, the Court of Appeal noted that it is the relationship between the main dwelling and the land in question which is relevant when considering function/use. Walker LJ at p.66J-67 E said as follows:

"In my view the decision in Dyer's case [1989] QB 346 was plainly correct. As Nourse LJ said, at p 358:

"While making every allowance for the fact that the size of a curtilage may vary somewhat with the size of the house or building, I am in no doubt that the 100 acre park on the edge of which Mr Dyer's house now stands cannot possibly be said to form part and parcel of Kingston Maurward House, far less of any of the other college buildings. Indeed, a park of this size is altogether in excess of anything which could properly be described as the curtilage of a mansion house, an area which no conveyancer would extend beyond that occupied by the house, the stables and other outbuildings, the gardens and the rough grass up to the ha-ha, if there was one."

"But in my respectful view this court went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression. No piece of land can ever be within the curtilage of more than one building, and if houses are built to a density of 20 or more to an acre the curtilage of each will obviously be extremely restricted. But Nourse LJ recognised that in the case of what the now-moribund Settled Land Act 1925 refers to as a "principal mansion house"—which is what Grimsdyke was built as—the stables and other outbuildings are likely to be included within its curtilage.

I also respectfully doubt whether the expression "curtilage" can usefully be called a term of art. That phrase describes an expression which is

used by persons skilled in some particular profession, art or science, and which the practitioners clearly understand even if the uninitiated do not. This case demonstrates that not even lawyers can have a precise idea of what "curtilage" means. It is, as this court said in Dyer's case, a question of fact and degree.

In my judgment the deputy judge was mistaken in treating Dyer's case as having such clear force as he thought it had. Not only was it concerned with dispropriatory legislation, but the Calderdale case, 46 P & CR 399 and the Debenhams case [1987] AC 396 were not cited, and the court's observations about smallness were not, on the facts of Dyer's case [1989] QB 346, necessary to the decision. In the context of what is now Part I of the Act, the curtilage of a substantial listed building is likely to extend to what are or have been, in terms of ownership and function, ancillary buildings. Of course, as Stephenson LJ noted in the Calderdale case, 46 P & CR 399, 407, physical "layout" comes into the matter as well. In the nature of things, the curtilage within which a mansion's satellite buildings are found is bound to be relatively limited. But the concept of smallness is in this context so completely relative as to be almost meaningless, and unhelpful as a criterion."

16. *In Lowe v Secretary of State [2003] EWHC 537 (Admin); [2003] J.P.L. 1281, Sir Richard Tucker reviewed the relevant authorities and commented:*

"Of the authorities cited to me, I derive most assistance from the decision of the Court of Appeal in Dyer v Dorset CC, and in particular the judgment of Nourse LJ in the passage already referred to at 358F–G. The expression 'curtilage' is a question of fact and degree. It connotes a building or piece of land attached to a dwelling house and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers.

It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house. But it cannot possibly include the whole of the parkland setting in which Alresford Hall lies, nor the driveway along which the fence was erected. It could not sensibly be contended that the site of the fence was attached to the hall, or that it formed one enclosure with it, or was part of the enclosure of it."

17. In *Sumption v London Borough of Greenwich* [2007] EWHC 2776 Admin , Collins J was dealing with the issue of whether a wall and gates were within the curtilage of a listed building. The facts, as I understand them, were that the area of the building and gates had not historically been within what could properly be described as the curtilage, but consequential on the works being carried out, they had come within the curtilage. At [27] Collins J said:

"It would, in my view, be well nigh impossible to contend that once the wall was erected and the garden use confirmed so that the land did indeed form part of the garden of Hillside House it was not within the curtilage. It does not seem to me to be relevant that the garden use has not formally been approved. What matters is what is in fact the use being made of the land. It is clearly capable of being used by the IP and some work has been done, if only tidying. He has access to it and it is now part of the land attached to Hillside House and being enjoyed with it. I do not regard the historical lack of connection as being capable of carrying weight in the circumstances. The situation as at November 2006 is what is material. In reaching its decision, the Council must have proper regard to all material considerations and eschew all immaterial. I do not think it can be said to have done that and I am clearly of the view that the facts permit of only one conclusion, namely that the curtilage of Hillside House does extend over the land. The reference in the application to the "recently expanded garden" is accurate and is fatal to the grant of the certificate"

18. From these cases I draw the following propositions:

- i) *The extent of the curtilage of a building is a question of fact and degree, and therefore it must be a matter for the decision-maker, subject to normal principles of public law;*
- ii) *The three Stephenson factors must be taken into account;*
 - a) *Physical layout;*
 - b) *The ownership past and present;*
 - c) *The use or function of the land or buildings, past and present.*
- iii) *A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration. Skerritts p.67;*
- iv) *Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration, but it is not a legal requirement that the claimed curtilage should be ancillary; Skerritts p.67C;*

- v) *The degree to which the building and the claimed curtilage fall within one enclosure is relevant, Sumption at para 17 and the quotation from the OED of curtilage as "A small court, yard or piece of ground attached to a dwelling house and forming one enclosure with it". In my view this will be one aspect of the physical layout, being the first of the Calderdale factors.*
- vi) *The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself; Sumption at [27]. It appears from Sumption that the Judge considered future intended use of the land or buildings may be relevant, but in my view some care would be needed in applying this proposition to the facts of a particular case. A developer cannot change the curtilage simply by asserting that s/he intends to use the site in a particular way in the future"*
18. The cases broadly support the guidance given in paragraph 7.2.10 of Defra "Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate December 2014" as follows:
- "...it appears that the question of whether land is to be considered to be within the curtilage of a building is a question of fact and degree. Earlier decisions suggested that the key factors to be taken into account were the physical layout of the land and buildings, past and present ownership and past and present use and function. However recent judgments appear to place more weight on present use and function than common ownership. Examples include a ...garden which [is] ancillary to the house."*
19. We distinguish the Application Land 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, 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 Declarations 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.
26. The woodland is confirmed as having been used for recreational walking through pathways.
27. Mr Bateman recalls 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 recalls 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* 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 Land 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 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 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.

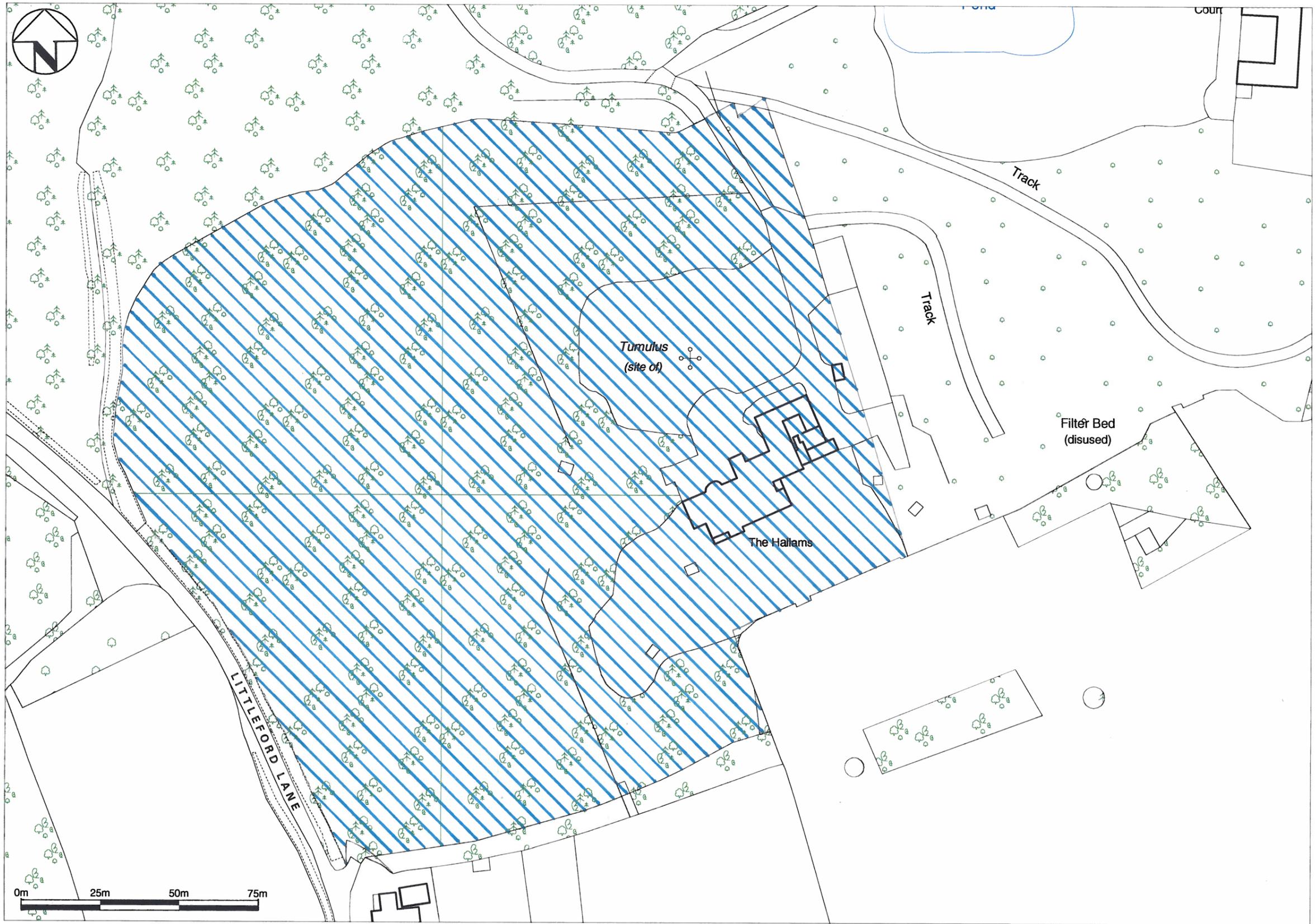


Yours faithfully

DMH Stallard LLP

List of appendices

- Appendix 1 – Application Land plan
- Appendix 2 – The Heritage Collective Report 2019
- Appendix 3 – Deregistration Land plan
- Appendix 4 – CgMs Report 2016
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Introduction

1. Carol Collins and Richard Turner, the owners of grade II listed “The Hallams” have submitted an application to de-register Common Land which falls within the registered title boundary of their property (see Figure 1 below). The Common Land in question is considered part of Blackheath Common, and as can be seen, all but the eastern part of the property has been registered as such. The date of provisional registration was 24th September 1968.

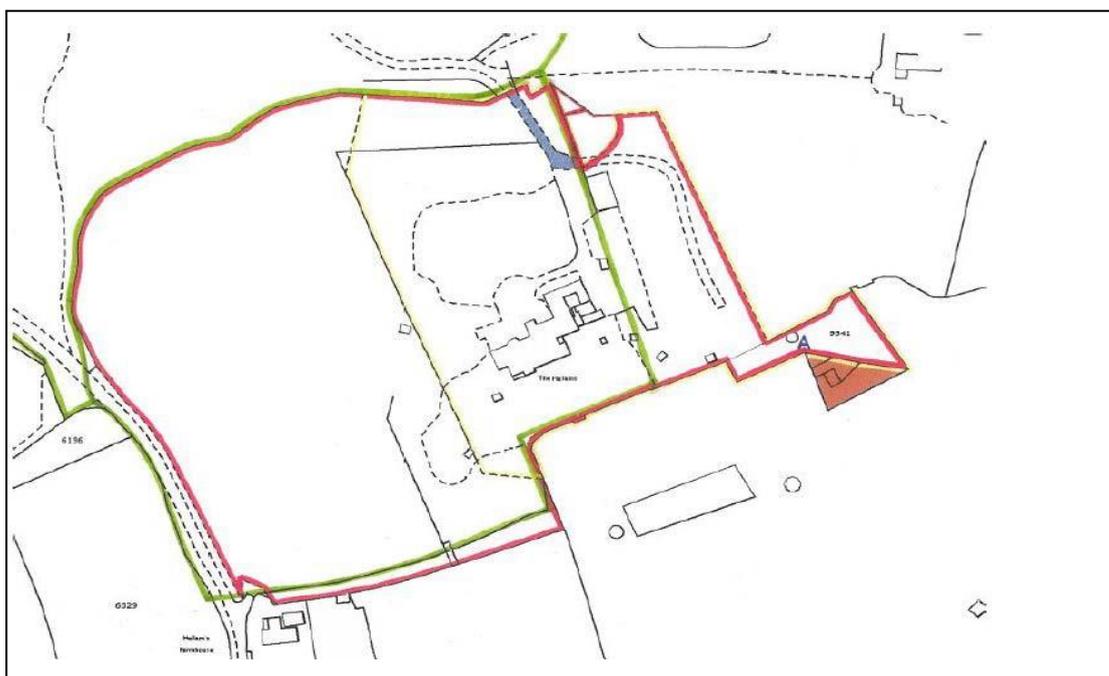


Figure 1: Plan showing the redline boundary of the registered title of “The Hallams” relative to the green line marking the boundary registered as Common Land.

2. Mr Turner and Mrs Collins’s application is made on the basis of paragraph 6, Schedule 2 of the Commons Act 2006 which relates to land covered by a building or within the curtilage of a building. This Report seeks to establish the extent of The Hallams and its curtilage since its provisional registration as common land on 24 September 1968.
3. The recently updated Historic England Advice Note which deals with curtilage listing states that in respect of the courts there are three key factors to be taken into account in assessing whether a structure or object is within the curtilage of a listed building:
 - the physical layout of the listed building and the structure;
 - their ownership, both historically and at the date of listing; and
 - the use or function of the relevant buildings, again both historically and at the date of

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listing (these tests were first proposed in the Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC, 1982, as accepted by Debenhams plc v. Westminster CC, 1987).

4. The Historic England list description for “The Hallams”, produced in 1973, is as follows:

Country House. 1894-5 by Richard Norman Shaw for Charles Durant Hodgson, in Vernacular style. Brick below tile hung above with some half-timbered gables and entrance--porch with colourwashed roughcast infilling. Plain tiled roofs. Two storeys and attics to left under hipped 5-light dormer. Front offset ribbed stack with corbelled top. End stack to left and stacks to left and right of porch. Irregular leaded fenestration to first floor left, six windows. Three windows on first floor to right, some with hexagonal glazing. Stone mullioned window with decorated glazing to ground floor right. Large wood framed, mullioned and transomed, oriel type angle bay to right with hexagonal glazing. Large gabled porch to centre with one 5-light diamond-pane attic window, two 4-light windows to first floor and diagonal bracing on frame. First floor of porch jettied. Arched doors with tracery panels. Hip-roofed single storey service wing to right projecting with flat dormer and two ground floor windows. Garden front - two half-timbered gables tile hung between and below with canted courses over the ground floor. Stone dressed casement fenestration with decorative glazing. Crowstepped stack to right. Interior:- Great Hall, with wood block floor also serving as entrance. Screens passage to end of three bays, the upper part built as a gallery with panelled balustrades. Three bay crown post roof extending over the gallery. Leaded angle bay window, barrel vault over the gallery and large fireplace to one wall. The Hallams is Shaw's last medieval hall plan house.

5. The list description makes no mention of structures ancillary to the house.
6. This report follows on from a curtilage listing assessment of “The Hallams” produced by CgMs in April 2016¹. The 2016 report concluded that the curtilage comprised the land and buildings included in the current land registration title plans, including unmanaged woodland west of the main house.
7. This assessment will therefore mainly address the question of the curtilage boundary to the north and west of the main house and examine any new evidence for a definitive boundary between the gardens and unmanaged woodland.

Historical Sources consulted

8. The following archival sources, not covered in the CgMs report, were consulted at the National Archives in Kew. They both provide valuable and detailed historical property ownership information and were examined for to see if they could shed any further light on the curtilage of “The Hallams”. Background information for the sources is provided under the relevant heading.

¹ Assessment of Listed Building Curtilage in respect of the Hallams, Blackheath, on behalf of Mr Turner and Mrs Collins, RPS CgMs Ref: HB/LR/21938, April 2016

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- 1909-1910 Finance Act Survey records
 - 1941-1943 Farm Survey Records
9. Online planning history and available title deeds for “The Hallams” were also consulted, and a second site visit was also undertaken. Its findings are included in this assessment.
 10. This assessment also revisits source material cited in the CgMs report, where relevant and/or applicable.

1909-1910 Finance Act Survey

11. The Finance Act of 1909-1910 (10 Edw. VII, c.8 section 26(1)) provided for the levy and collection of a duty on the increment value of all land in the United Kingdom. The main object of the Act was to tax that part of the capital appreciation of real property which was attributable to the site itself, i.e. excluding that arising from crops, buildings and improvements paid for by the owners. In this way, private owners were required to surrender to the State part of the increase in the site value of their land which resulted from the expenditure of public money on communal developments such as roads or public services.
12. As part of the nationwide property assessment required for the purposes of the Finance Act, a land survey was undertaken across England and Wales between the years 1910 and 1915. Property extents were annotated onto 25-inch scale Ordnance Survey (OS) maps, usually by means of colour shading, and ownership and occupancy details provided in accompanying “valuation” and “field books”. The final record maps and field books are held at the National Archives in Kew, and it is these documents which were consulted for this assessment. The working maps and valuation books are held in local archives.
13. Each Individual property or plot was given a unique hereditament number on the map, usually inked in red, with a corresponding entry provided in the field book. The land currently attached to “The Hallams” formed part of hereditament 1204 (see map extract in Figure 2 below). The entry for this hereditament is provided in a field book under National Archives catalogue number IR 58/34126. The description reads as follows: “*The Hallams: mansion and land*” owned freehold and occupied by Charles Durant Hodgson. The field book states that in addition to the house, hereditament 204 contained “*stabling & garage accommodation*” as well as “*well timbered and laid out gardens*”. Hallam’s Farm was also included in the estate.
14. As stated in paragraph 4 above, “The Hallams” was built in 1894-1895, only fifteen or so years before the Finance Act Survey was carried out. It was actually constructed as a private residence for the very same Charles Durant Hodgson referred to in the Finance Act field book, a brewer who had moved his business to Kingston around this time. An 1871 Ordnance Survey map (not reproduced) showed that prior to the construction of the house and estate, the land covered by hereditament 1204 was a mixture of woodland and heathland. It is interesting to

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note that on the 1871 map, the woodland shown within the boundary of the land parcels which later formed hereditament 1204 is depicted differently to the woodland shown on adjacent Blackheath Common.

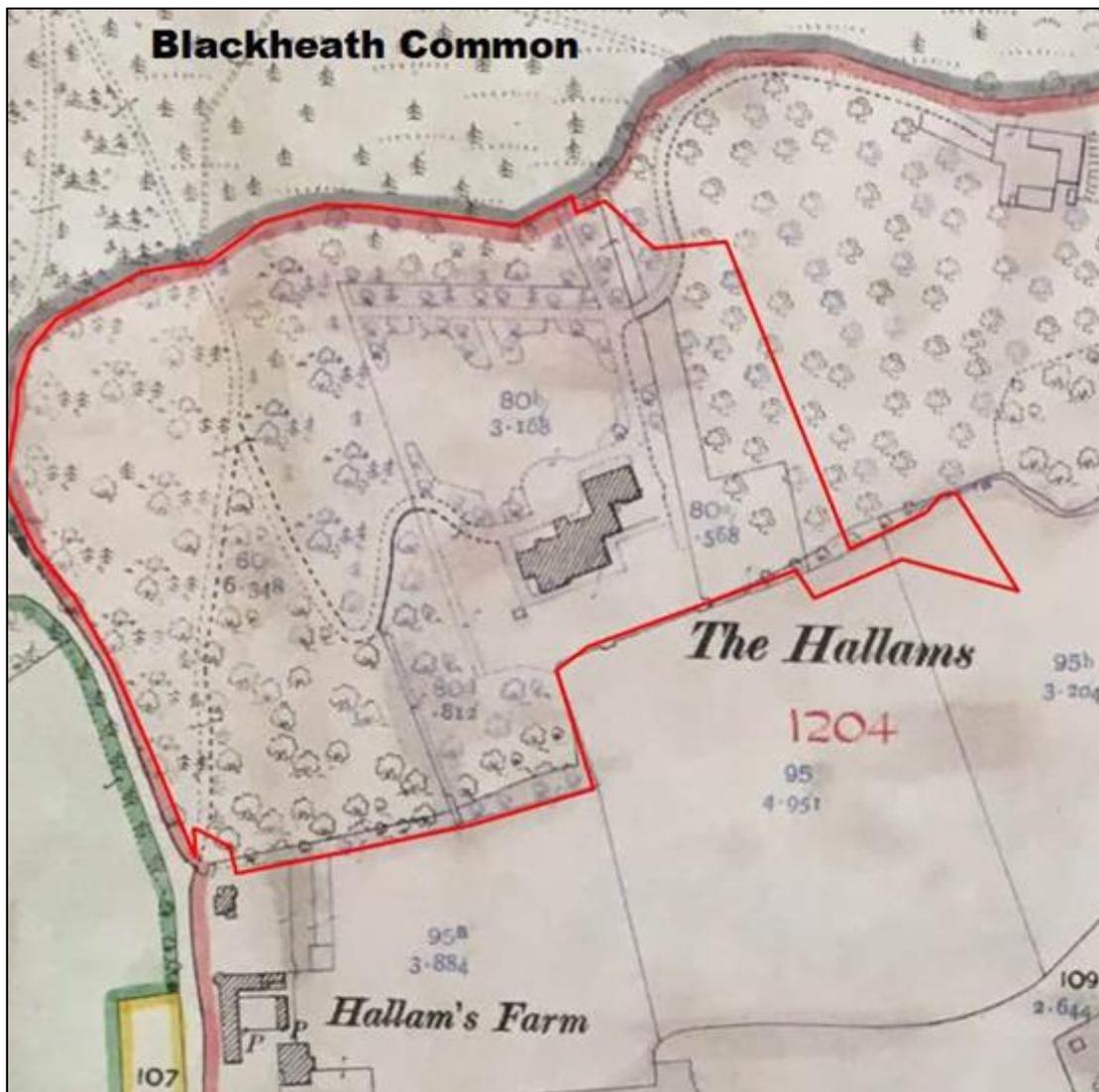


Figure 2: 1910 Finance Map extract (National Archives catalogue no. IR 125/3/107) with the land currently registered to “The Hallams” outlined in red by the author. As on the 1871 OS map, the woodland within the redline boundary is depicted as being more mixed in character than that of the woodland on adjacent Blackheath Common

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15. The Ordnance Survey 25-inch base mapping annotated for the purposes of the Finance Act Survey was the second edition 1896 series, which depicts “The Hallams” and its grounds only a few years after it was built. It shows more detail than the 1896 OS map extract provided in the CgMs report and there already appears to be a clearly defined garden, which can be interpreted as its curtilage, around the house, presumably defined by boundary walls. There certainly appears to be a distinction between the garden around the house and the woodlands beyond, although both fell within the property ownership boundary at the time.
16. Assessment of Evidence: Neither the map evidence or the field book entry of the Finance Act survey of “The Hallams” has anything to say about the curtilage of the house but the 1896 Ordnance Survey base mapping shows that there was already a clearly delineated garden boundary around the house soon after it was built. The woodland beyond the garden boundary, but within the property ownership boundary, of “The Hallams”, was depicted as mixed woodland compared to the coniferous trees shown on adjacent Blackheath Common, and the non-coniferous trees within the garden.

1941-1943 Farm Survey

17. The Second World War impacted heavily on imports of food and fertilisers, which resulted in a desperate need for the area of land under cultivation to be increased significantly and quickly. The Ministry of Agriculture and Fisheries set up War Agricultural Executive Committees in each county to carry out a farm survey between 1940 and 1941, and to use the information collected to bring uncultivated land under the plough and improve poor farms. Although this survey achieved its short-term aim of increasing food production, a second one was implemented in the same year, this time with the long-term objective of post-war planning.
18. The records of the second survey are held at the National Archives in Kew, and unlike Enclosure Award and Tithe documents were not generated by an Act of Parliament. The value of the Survey for property historians is that farm boundaries were recorded on Ordnance Survey base mapping (National Archives record series MAF 32), and details of their occupancy, ownership and land use were recorded in an accompanying set of forms filled in by both the farmer and a farm inspector (National Archives record series MAF 73). Each farm was given a unique code on the map which can be cross-referenced against the relevant set of forms kept in folders ordered by parish.
19. “The Hallams” mansion and its grounds have never formed part of a farm, so only the boundary of Hallams Farm, which originally formed part of the Hallams Estate, is shown on the Farm Survey annotated OS base map. The base mapping used in this case was the 1916 OS map referenced in the CgMs report and it has been reproduced in Figure 3 below.
20. In terms of the evidence provided by the 1916 OS map, the main change from the second edition 1896 OS map, as commented on in the CgMs report (para. 3.7) is that more land appears to have been incorporated into the garden to the southwest of the house. This extended garden, which included tree-covered OS plot 80a, is bounded by a wall to the west, which was, in part,

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uncovered during the second site visit (Figures 3 & 4). This structure is also shown on the Finance Act map extract in Figure 2 (where it is marked by double lines) although at this time it didn't appear to form such an obvious boundary).



Figure 3: Extract from OS 25-inch scale map sheet Surrey XXXII.10, surveyed in 1913 & published in 1916. A moss-covered section of what appears to be the extant footing of a garden boundary wall was exposed during the site visit carried out for this assessment (see Figure 4 below). It would appear to have been part of the wall ringed in red on the above map extract



Figure 4: Moss-covered section of the western garden boundary wall (ringed in red) seen on the second site visit and highlighted in Figure 3 above

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21. The brick and stone steps shown in Figure 14 of the CgMs report were not observed during the second site visit but appear from the photograph to have been located along the line of the western boundary wall.
22. The southern boundary of the garden at this location is currently delineated by a well- defined ditch which has the appearance of a field boundary pre-dating the construction of “The Hallams”.
23. Assessment of Evidence: The evidence of the 1940s Farm Survey is not applicable in this case, as “The Hallams” and its grounds have never formed part of a farm. The survey does, however, use the 1916 OS map referred to in in the CgMs report as base mapping, and as the report states, the garden, and therefore, curtilage of the house appears to have been extended to the southwest by that time.

Title deeds

24. The CgMs report refers to sale document plans from 1929 and 1951 which show the original “Hallams Estate” divided into separate lots. The plan attached to a conveyance accompanying the 1951 sale (not reproduced in the CgMs report) is shown in Figure 5 below.



Figure 5: Plan attached to the 1951 conveyance of part of the “The Hallams” estate

25. The land shaded reddish-brown on the conveyance appears to represent the house and gardens which were sold separately to the land (shaded green) which eventually became Hallams Court. The unmanaged woodland is excluded from the sale plot containing the house.

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Planning History

26. The Waverley Borough Council website contains online records of the planning history of “The Hallams” from the time the original estate was finally sold off in 1951². However, the records are incomplete and do not provide any relevant information concerning the curtilage of the main house.

Physical evidence on the ground

27. The site visit carried out for this assessment in January 2018 looked for any traces of physical evidence that the woodland to the west and north of the mansion could be considered as part of its curtilage. The following observations were made:
- As stated in paragraph 21 above, there are no upstanding remains of garden walls shown on historical OS mapping to the west of the house, although their footings do survive, at least in part; the brick and stone steps noted during the CgMs site visit also appear to be sited along the western boundary between the garden and woodland.
 - Unlike the tree planting immediately north of the house, which is clearly managed and part of the garden, the woodland west of the house and along its northern boundary is clearly unmanaged and very similar to that seen on adjacent Blackheath Common.
 - A small section of ditch is present in the northwest corner of the property, but it was not extensive enough to be conclusive evidence of a clearly defined and continuous boundary between the “The Hallams” and Blackheath Common. Nor is there any evidence to suggest that it formed part of the curtilage of the house.
 - As stated in paragraph 23 above, a more prominent and extensive ditched- and banked- boundary feature was visible in the southwest corner of the property. Again, there is no clear evidence that this marks a garden/curtilage boundary.
 - A series of parallel shallow linear features which appear to be associated with a small square stone structure were noted in the rough woodland northwest of the house (Figure 6); it is not known whether the features and structure are associated with management of the woodland or the former access road to the house, and they are currently insufficient evidence of the curtilage of the house extending in this direction.

² <http://planning360.waverley.gov.uk/planning/search-applications?civica.query.FullTextSearch=hallams>

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Figure 6: Sunken stone structure (well or sump?) with a shallow linear depression behind it, both in the area of rough woodland northwest of the house

Initial Conclusions

28. The supplementary historical evidence consulted for the purposes of this assessment does not add much to the current knowledge of the extent of the curtilage of “The Hallams”. By the same token, however, it does not present any conclusive evidence that the unmanaged woodland to

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the west or north of the house was ancillary to the main house, and therefore part of its curtilage, either before or after the provisional Commons registration date of 24th September 1968.

29. The site visit did note the survival of part of what appeared to be a garden boundary wall to the southwest of the house. The existence of a walled boundary suggests a separation between the garden and the rest of the land south-west of the house.
30. The map extract in Figure 7 below takes into account the findings above and removes the unmanaged woodland area from the curtilage of “Hallams”. The area edged and shaded blue represents the house and its curtilage since the relevant date of 24 September 1968.

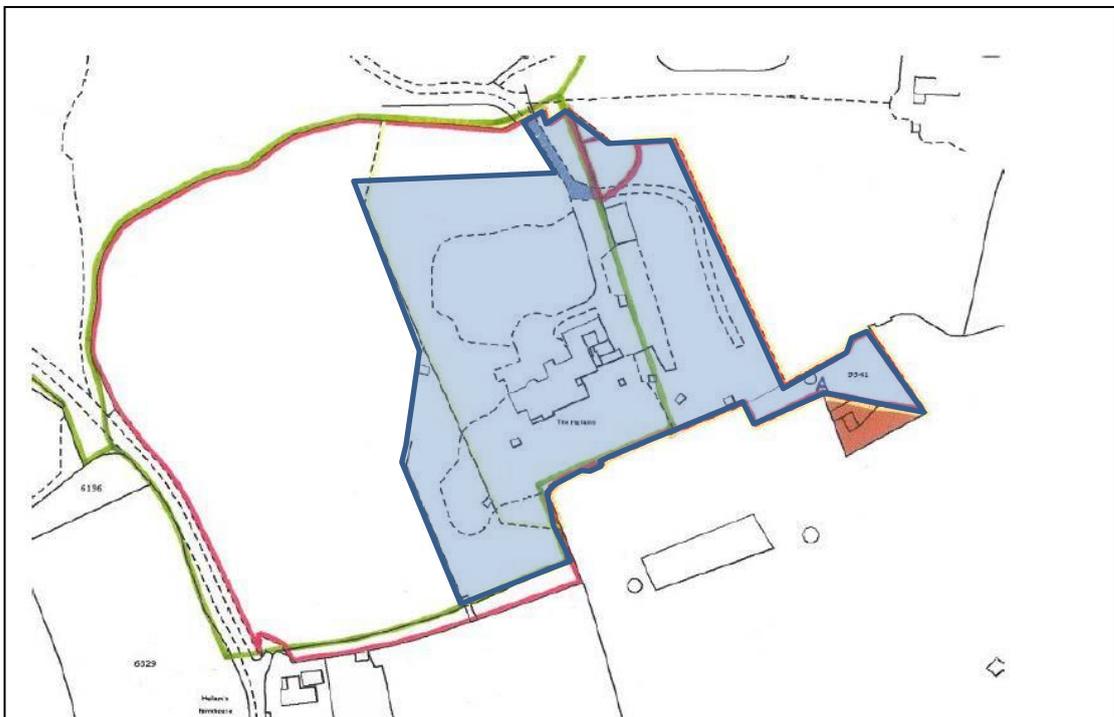
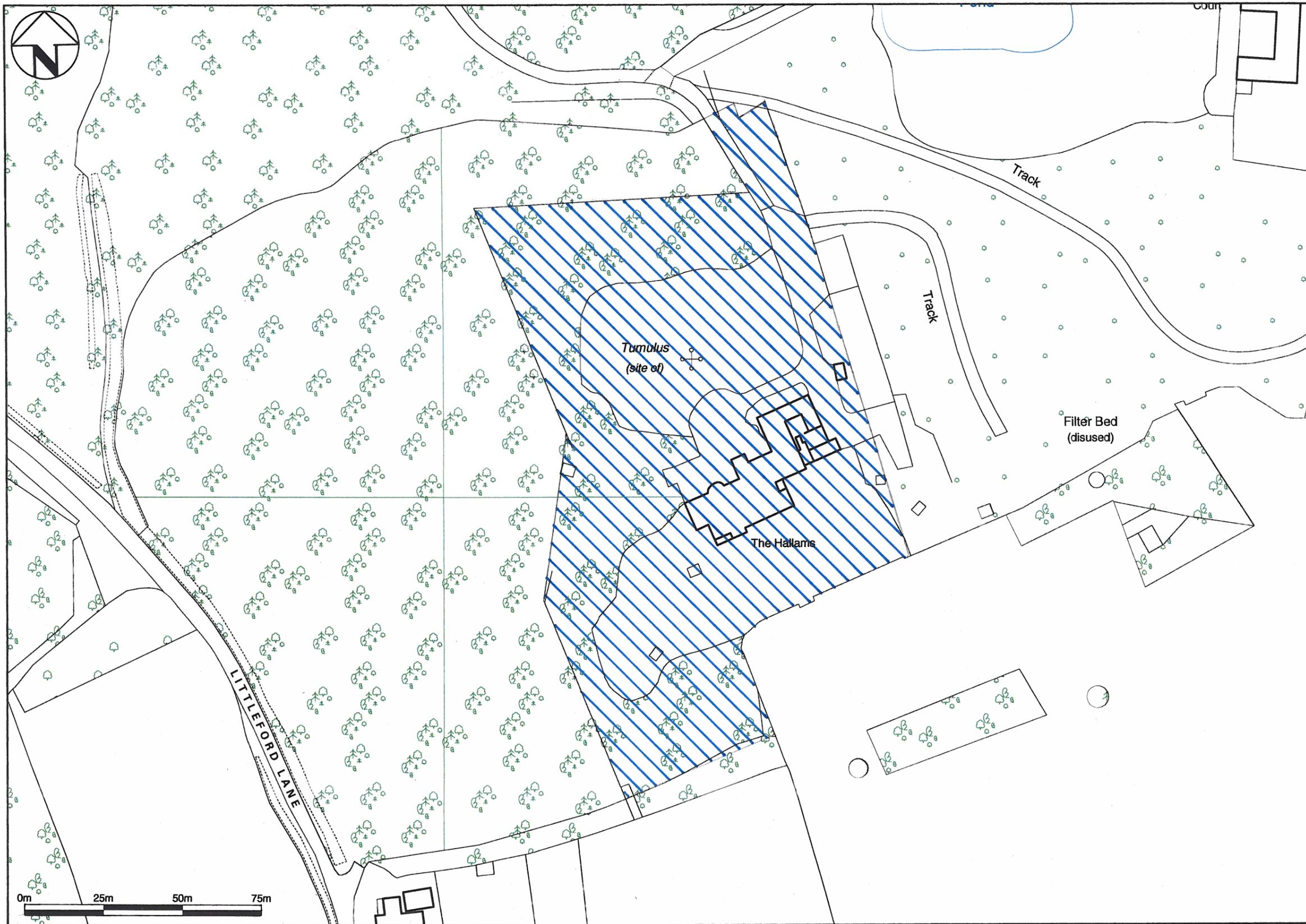


Figure 7: Revised extent of the curtilage of "The Hallams" shaded in blue and shown relative to the Commons registered land (green boundary) and registered title (red boundaries). This differs from the extent shown in the CgMs report as it excludes the unmanaged woodland to the north and west of the house

Adrian Parry, on behalf of Heritage Collective, 24th May 2019



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