

From: [Karamian, Chloe](#)
To: [Helen Gilbert](#)
Subject: The Hallams (DMH Stallard Ref:297874-1)
Date: 05 September 2019 15:25:57
Attachments: [image5fea36.PNG](#)
[image6b031.PNG](#)
[image3b42bb.PNG](#)

Dear Helen

As you know, we act for the applicants.

We write further to your Counsel's opinion of 5 August and the subsequent responses of Steve Byrne dated 13 August and OSS dated 15 August.

Comments on objections

The OSS confirm that their issue is not with the plan itself but the procedure as to whether the original application plan can be revised. They refer to a 2005 Court of Appeal decision which we note relates to Village Greens, rather than Common Land.

We provided a plan showing a smaller area proposed to be de-registered upon receipt of your Counsel's advice of 17 October 2017. Paragraph 11 states, "*What I think the CRA should do is to inform the applicants' solicitors that the preliminary view of the CRA is that the application should be rejected unless the application plan is amended to exclude the woodland on the western side which is considered to be outside the curtilage of the qualifying built development and managed areas to the east of the woodland. It is no function of the CRA to find a line for the applicants who should be encouraged to seek advice about the matter before lodging a new plan to which further consideration will be given.*"

The County Council should be able to deal with the OSS's objection simply on that basis.

Regardless of whether the new plan is considered a variation or not, the County Council can grant a de-registration of such land it considers appropriate and so can de-register the smaller area. The effect is still the same – that only the smaller area is de-registered on the basis that it is deemed to comprise building and curtilage.

Mr Byrne's position is that The Hallams potentially has no curtilage at all due to its spacious setting. Your Counsel sought clarification and Mr Byrne has not provided it. Our position is that The Hallams does and must have a curtilage. In fact, your Counsel initially accepted the entire application site save for the wooded area. The objection of Mr Byrne does not bring any new evidence to contradict this view.

Proposed next steps

-
This application was submitted to the County Council on 16 May 2016. Counsel's initial advice was only obtained in October 2017. We are now over 3 years from the date of the initial application.

We consider that the objections can be dealt with appropriately by the County Council without the need for a site visit or informal hearing, particularly given that neither objectors intend to appear at the site visit/hearing or make comment on the latest plan. No party has requested a hearing.

Our client has incurred considerable costs to date and the proposed next steps will only increase those. We assume this is the same for the County Council and the public purse bearing the costs of the on-going application.

We therefore urge that the County Council consider whether it is able to deal with the objections and de-register the area shown on our latest plan as soon as possible, without the need for further input from the objectors, a site visit or a hearing.

We look forward to hearing from you with the County Council's intentions.

Chloe Karamian | Partner | Tel: +44 (0)1293 605568
For and on behalf of DMH Stallard LLP
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FAO Helen Gilbert
Commons Registration Officer
Surrey County Council

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

Date 9 January 2020
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 CL435
Application No. 1876**

Thank you for your email of 17 December 2019, providing us with a copy of the Inspector's draft report.

On behalf of the Applicants, we concur with the Inspector's overall conclusion that the "application land" (being the land hatched blue on Appendix 2 of the Inspector's report) should be de-registered according to the test of Paragraph 6, Schedule 2, Commons Act 2006. As set out in our letter of 29 November 2019, the evidence and case law clearly supports this position.

We make the following comments on the Inspector's consideration of the evidence for his review in finalising his draft report:

1. The witness evidence has been 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.
2. 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 Statutory Declaration of Carol Collins and paragraph 9 of Statutory Declaration of Darren Osborne).
3. We understand that a photograph of the stone bench was taken and shown to the Inspector at the site visit dated 16 October 2019.

We look forward to receiving the final report and decision of Surrey County Council in due course.

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Please do not hesitate to contact Chloe Karamian should any further information be required.

Yours faithfully



DMH Stallard LLP

FAO Helen Gilbert
Commons Registration Officer
Surrey County Council

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

Date 17 October 2016
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
Application No: 1876**

Thank you for your letter enclosing various comments on the above application.

We have considered the comments put forward and dealing with each representation in turn, we remark as follows:

1. County Council's Countryside Section

We cannot see how designation of part of the land within the Blackheath SSSI affects its position as a building's curtilage. Section 28 of the Wildlife and Countryside Act 1981 states that a SSSI is "of special interest by reason of its flora, fauna or geological or physiographical features". This does not preclude land within the curtilage of a building being designated as a SSSI.

2. Mr Byrne

Rights of common were registered, those rights were removed by the 1978 conveyance and subsequently removed from the register. As a matter of fact, the land is still registered common land.

Paragraph 6, Schedule 2 of the Commons Act 2006 provides a means of rectifying the position where buildings and their curtilages were registered as common land and this is the basis on which our clients' application is made. Paragraph 6 does not raise the

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issue of whether the application land is or has ever been common land; it provides for four conditions which have been dealt with in the application.

3. Open Spaces Society ("OSS")

The OSS agrees that part of the land should be removed from the Register of Common Land ("being the buildings contained within the application area, and the gardens, yards and other immediately ancillary land to them"). The OSS objects to the wooded area being de-registered on the ground that it does not form part of The Hallam's curtilage. The OSS say that the woodland is not sufficiently connected with the mansion house to be its curtilage and further argues that the term "curtilage" should be narrowly construed in the context of paragraph 6, Schedule 2 of the Commons Act 2006.

"Curtilage" is not defined in the Commons Act 2006 nor in any other statute, as far as we are aware. The OSS relies on the case of *St George's Church* to conclude that a curtilage must be a 'small area'. This has been decided to the contrary by the Court of Appeal in *Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2001] QB 59.

The OSS suggest that "curtilage" in this context should be construed narrowly. Clearly, there is a policy behind the use of the word in paragraph 6, Schedule 2 of the Commons Act 2006. The policy is to balance (i) on the one hand, the interests of commoners in the registered common land (if there are any) and the interests of the public (who normally have a right of access to registered common land for recreation under the Countryside and Rights of Way Act 2000) and (ii) on the other hand, the interests of the building owner in maintaining the privacy and security of his building. We cannot see any reason why this should necessitate either a narrow or wide construction of "curtilage" because this would unfairly weigh towards one of those competing interests.

Our clients have commissioned experts to consider ascertain the building and its curtilage for the purposes of this application. CgMs have visited the site and undertaken research to come to their conclusion that the entire application site is and has at all relevant times been covered by a building and its curtilage. Part 2 of CgMs' report sets out the basis on which they determine a curtilage. This is supported by case law and, whilst this case law has been made in the context of a listed building, there is no reason to find that "curtilage" means anything different in the context of this application. The OSS have not provided any legal basis for such a contention.

As such, we respectfully request that the application be granted to de-register the entire site.



Please do not hesitate to contact Chloe Karamian at this office should the County Council require any further information at all. We ask that the County Council inform us of its view prior to making any formal decision in order that we may deal with any outstanding matters.

Yours faithfully



DMH Stallard LLP

From: [Karamian, Chloe](#)
To: [Helen Gilbert](#)
Subject: RE: App 1876 CL 435 The Hallams (DMH Stallard Ref:297874-1)
Date: 17 July 2019 14:06:44
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image69bc50.PNG](#)
[image044fef.PNG](#)
[imagef013dd.PNG](#)

Dear Helen

In respect of the comments from the objectors I would point out:

1. The plan was provided further to the Council's Counsel's advice. The OSS have provided no legal basis for the suggestion that the Council cannot accept an amended plan and there is nothing in the legislation which would prevent this. In any event, the OSS agree that the Council can accede to the application in part which would involve de-registration of the smaller area. No parties would be prejudiced by such de-registration.
2. The Hallams clearly does have a curtilage. Curtilage is based on the key factors of physical layout, past and present ownership and past and present use and function. The latest report provided identifies the view that the curtilage comprises the land surrounding The Hallams and excluding the woodland area.

If your legal team have any further queries or would like any further information, please do not hesitate to contact me.

I look forward to hearing from you.

Kind regards

Chloe Karamian | Partner | Tel: +44 (0)1293 605568
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