10

From: Hugh Craddock
To: Helen Gilbert
Subject: RE: App 1876 CL 435 The Hallams (DMH Stallard Ref:297874-1)
Date: 04 July 2019 14:39:44

Hi Helen

Thank you for your email of 5 June, and the submission made on behalf of the applicants.

It is of course open to the registration authority to grant the application only in part. What is less clear is whether the authority can accept an alteration to the application at this stage — however, it appears that this is not what the applicants have sought. The society would not be content to see the application amended, and does wish the application, as originally made, determined by the authority.

We agree that the concession made by the applicants in relation to the identification of the curtilage of the houses addresses some of the objections made by the society. But it remains for the authority to decide what land qualifies for deregistration, based on its assessment.

regards

Hugh

Hugh Craddock
Case Officer
Open Spaces Society
25a Bell Street
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RG9 2BA
Email: [redacted]
www.oss.org.uk
Tel: 01491 573535
Please note that I work Mondays, Wednesdays and Thursdays
(Registered in England and Wales, limited company number 7846516
Registered charity number 1144840)

Please support our campaign now to ensure highways across commons are not deregistered.

From: Helen Gilbert [mailto:helen.gilbert@surreycc.gov.uk]
Sent: 05 June 2019 12:02
To: Hugh Craddock; [redacted]

10

Subject: FW: App 1876 CL 435 The Hallams (DMH Stallard Ref:297874-1)

Hello

We have now received a response from the applicant. Please let me have any comments on the attached by 3rd July 2019.

Regards
Helen

Helen Gilbert
Commons Registration Officer
Legal & Democratic Services

Corporate Information Governance Team (Room 138) | Democratic Services | Surrey County Council | County Hall | Penrhyn Road | Kingston upon Thames | Surrey | KT1 2DN
Tel: 020 8541 8935 | Email: helen.gilbert@surreycc.gov.uk |

10

From: Hugh Craddock
To: Helen Gilbert
Subject: RE: The Hallams (DMH Stallard Ref:297874-1)
Date: 09 September 2019 10:16:06
Attachments: image005.png
image007.png
image008.png
image009.png

Hi Helen

Thank you for sight of the correspondence.

It remains our position that we wish to see a determination by the council in relation to the whole of the application land.

We note that the *Trap Grounds* case is distinguished by the applicants' solicitors as a decision relating to village greens vice common land. However, as you will know, the principles here are on all fours with the present case: the present application is made under the successor legislation to the application in the *Trap Grounds*, and the application brings into question the status of the land.

regards

Hugh

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highways across commons are not deregistered.

10

From: Hugh Craddock
To: Helen Gilbert
Subject: RE: App 1876 CL 435 The Hallams (DMH Stallard Ref:297874-1)
Date: 12 August 2019 16:54:41

Hi Helen

We are content with the process proposed by counsel. We have no wish to attend a site visit, and are content for counsel to attend accompanied by the applicant's representative (with or without a council officer).

It is not really a question of whether we are happy with the revised plan. There is agreement between all parties that the original application, in its extent, goes beyond the curtilage of the buildings on the application site, and that the curtilage amounts to something less. Our position is that the council has adopted a proper process to identify that curtilage, and we are content to see that process to proceed. We would like to see the findings of that process, but subject to the possibility of comment at that stage (mindful that we shall not have been present at the site visit), have no wish to pronounce on the correctness of the identification of curtilage by the applicant's advisers.

As to amending the application, our position is that we wish the council to determine the original application, by (we anticipate) determining that part of the application land meets the application criteria, and part does not (the precise elements of each yet to be determined). What we do not wish to see is the original application withdrawn and replaced by something less which is granted in full: that would leave the status of the balance of the land left formally undetermined. Therefore, rather than treating the revised plan as amounting to a revised application, we suggest that it is treated as guidance as to what the applicant would find acceptable, if the council were to determine to grant the application in part (comprising, for example, the part identified in the revised plan).

The distinction may seem slight, but we see it as important to have the original application determined in full. In the *Trap Grounds* case, in the Court of Appeal (Oxfordshire County Council v Oxford City Council & Anor [2005] EWCA Civ 175, Carnwath LJ quotes from the inspector's report (by the late Vivian Chapman QC) in the context of whether the applicant to register the Trap Grounds as a green should be permitted to amend the application to reduce the area sought to be registered (at para.104):

> 'My view is that an applicant under s 13 has no absolute right to amend or withdraw an application. It is not unknown for campaigners to make and then purport to withdraw and resubmit s 13 applications as a tactic to inhibit the development of land. I should make it clear that there is no question of such a tactic in this case but I consider that the registration authority must have a power to insist on determining a duly made application so that the status of the land is clarified in the public interest. However I consider that it is, as a matter of common sense, implicit in the 1969 Regulations that a registration authority does not have to proceed with an application that the applicant does not wish to pursue (whether wholly or in part) where it is reasonable that it should not be pursued. It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether

wholly or in part unless there were some good reason to do so.

In the present case, the city council as landowner has made it clear, through its counsel, that it does wish to have the status of the Trap Grounds as whole determined. I consider that it is a reasonable wish on the part of the landowner to know whether its land has become a town green or not. I can see no good reason why the status of the reed beds and the 10 metre strip should remain in limbo. The fact that Miss Robinson would not object to use of the 10 metre strip as access road to the new school is entirely irrelevant to the question whether that land has become a prescriptive town green. My advice to the county council as registration authority is (a) that Miss Robinson does not have power to insist on amending her application, (b) that the county council has power to allow an amendment where it is reasonable to do so, (c) that in the present case it would be unreasonable to allow the proposed amendment because the city council as landowner wishes to have the status of its land determined, and (d) that the county council should determine the original application as a whole.

In the event, Carnwath LJ described that analysis as 'sensible, and unobjectionable as a matter of law' (also at para.104), and in his opinion in the House of Lords, Lord Hoffmann (with whom the other judges agreed) said (para.61) he 'agree[d] with the approach taken by Mr Chapman and the general remarks of Carnwath LJ [2006] Ch 43, 73-75', adding that the matter remains for the exercise of the registration authority's discretion.

So our position is that we do wish to vindicate the status of the entirety of the application land by a determination of the application as it stands.

regards

Hugh

Hugh Craddock
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The Hallams: deregistration application no.1876
Hugh Craddock
to:
commons.villagegreens@surreycc.gov.uk
12/09/2016 11:26
Hide Details
From: Hugh Craddock [redacted]>
To: "commons.villagegreens@surreycc.gov.uk" <commons.villagegreens@surreycc.gov.uk>,

History: This message has been forwarded.

Dear Helen

This email is an objection on behalf of the Open Spaces Society to the application from CA Collins and RPH Turner to the deregistration of land at The Hallams, forming the majority of register unit CL435.

Our objection is simply that the application is wrongly founded in paragraph 6 of Schedule 2 to the Commons Act 2006 ('the 2006 Act'). The application area includes extensive woodland (which we refer to below as 'the wilderness'), which in the Society's view is not part of the curtilage of a building for the purposes of paragraph 6(2)(b) and (d). The application includes a report from RPS CGMS as to the extent of the curtilage of The Hallams for the purposes of listed building legislation, but as we shall show, we do not think this is helpful.

Curtilage sees significant use in English law. Most obviously, it is used in planning and listed building legislation, but it is also used elsewhere in the 2006 Act, in regulations made under paragraphs 2 and 3 of Schedule 2 (where it fulfils a mirror image role of excluding land from registration). It has also been used in relation to tax and rating legislation.

It follows that a number of cases in the higher courts have been concerned with the interpretation of 'curtilage'. However, the Society believes that limited value can be gleaned from applying the case law so established. For example, in section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act'), a listed building includes: "any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land... ." In this context, the intention of the Act is to confer protection on the setting of a listed building, including features which, although not part of the building structure itself, are intrinsically related to it, and form part of the contextual whole (typically, this might include statues on the terrace or a mews building within the courtyard).

But paragraph 6 — and, in relation to town or village greens, paragraph 8 — have a specific purpose. They enable the deregistration of a building, or curtilage of a building, which has endured on the registered land for so long that it should cease to be registered. These provisions are a concession to pragmatism, but they are a constrained concession. Following the registration of land under section 4 of the 1965 Act, no effective provision was made by that Act for deregistration of wrongly registered land. The Common Land (Rectification of Registers) Act 1989 ('the 1989 Act') made very specific, time constrained provision for deregistration of land covered by a dwelling house or land ancillary to a dwelling house . The Society infers that no application was made in relation to the application land under the 1989 Act. Once the 1989 Act had become spent, no further provision was made for deregistration of registered land until paragraphs 6 and 8 were brought into force in December 2014.

The intention of the inclusion of curtilage in the tests for deregistration under paragraphs 6 or 8 (referred to below as the 'relevant tests') must therefore be to enable the deregistration of land, which is not covered by a building, but which is so intrinsically connected with the building that it is only right that it should also benefit from the same statutory pragmatism, for to deregister only

the building itself might confer only a very partial benefit on the applicant. The most obvious examples of land likely to fall within the scope of curtilage are those specified as 'ancillary to a dwellinghouse' in the 1989 Act, defined as: "a garden, private garage or outbuildings used and enjoyed with the dwellinghouse".

But the breadth of curtilage in this context is not comparable with its use in planning legislation. Curtilage, in the 1990 Act, is used in the expression, "the curtilage of the building" (my emphasis), referring to the specific, usually principle, building which has been listed. In the relevant tests, it is used in the expression, "the curtilage of a building" (my emphasis again), meaning any building.

In the planning context, "no piece of land can ever be within the curtilage of more than one building" (*Secretary of State for the Environment, Transport & the Regions & Anor v Skerritts of Nottingham Ltd* [2000] EWCA Civ 60, *per* Walker LJ, at paragraph 23), and for the purposes of listed building control, the curtilage of a listed structure may include a number of subsidiary buildings and grounds. Whereas for the purposes of the relevant tests, there is no focus on a principal structure, and each of those buildings may have its own curtilage, which taken as a whole, may be (but need not necessarily be) substantially smaller in extent than the principal structure and its curtilage for the purposes of listed building control. For example, in *Skerritts*, the Court of Appeal decided that a stable block some 200 metres from the listed house was within the curtilage of that house. The Society believes that *Skerritts*, and other cases derived from planning law, have limited value in the interpretation of the relevant tests because of their focus on the curtilage of a principal building. Instead, the correct approach must be to look at a building in isolation, and determine the extent of its natural curtilage without regard to the protection of the heritage of the built environment.

Looking away from listed building cases, in relation to section 7 of the of the Faculty Jurisdiction Measure 1964, which confers jurisdiction over unconsecrated ground which is part of the curtilage of a church, a consistory court found curtilage to be a 'small area' which 'physically adjoins' and 'serve[s] some purpose of the [church] building in a necessary or useful way' (*Re: St George's Church, Oakdale* [1976] Fam. 210). Although the court reached this conclusion in relation to a church in the context of Church of England law, there is nothing about its conclusion which resists its wider application.

The application land includes extensive areas of scrub and woodland which are not cultivated as part of the garden of The Hallams, and which, so far as we can tell, are now indistinguishable from the neighbouring heath. This land cannot be regarded as part of the garden of The Hallams, but more as wilderness, and a buffer between Littleford Lane and the publicly accessible heath to the north, and the house and gardens. While this land is indisputably owned by the owners of The Hallams, that does not make it part of the curtilage of The Hallams, and the Society says that it is not. The wilderness is not 'intimately associated' with the house and gardens, but a useful adjunct to it. It is certainly not some 'small area' which serves the 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 formerly, until 2006, occupied as offices, and suggest that the wilderness was even less likely to form part of the garden of an office.

We note that the report from RPS CGMS approaches the question in terms of whether the application land is part of the curtilage of The Hallams for the purposes of the 1990 Act, but submit that this is the wrong test. 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. We have no evidence as to the threshold between garden and wilderness, and you may wish to seek further data on this point. It may also be helpful for the decision maker to be informed by a report from a site visit by an independent person.

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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.

I should add that the Society is more than happy to consider an application for deregistration of the whole of the application area under paragraph 7, if it is fully supported by evidence as to the criteria under paragraph 7(2), and particularly subparagraphs (i) to (iv) of paragraph 7(2)(d).

regards

Hugh

Hugh Craddock
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Tel: 01491 573535
Please note that I work Mondays, Wednesdays and Thursdays
(Registered in England and Wales, limited company number 7846516
Registered charity number 1144840)

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10

From: Hugh Craddock
To: Helen Gilbert
Subject: RE: Commons Amendment App: 1876 re: The Hallams, Littleford Lane, Blackheath
Date: 18 December 2019 11:28:29
Attachments: image001.png
image003.png
image004.png
image005.png
image006.png
image016.png
image017.png
image015.png

Hi Helen

Thank you for your email and attachments.

I can confirm that the society is content with the inspector's report, and has no substantive comment.

We would briefly remark that, in para.7 of the draft report, it is stated that: 'the AL is currently a registered common to which the public has access under the Countryside and Rights of Way Act 2000 but with no subsisting rights of common thereon.' However, the right of access conferred by Part I of the 2000 Act may be excepted in relation to the AL, because some or all of it is likely to be either 'garden' or curtilage of buildings (see paras.2 and 4 of Sch.1). Of course, this is of no moment in relation to the determination of the application before the council, but the inspector may like to modify the words used in the final report.

We thank you and the inspector for your diligence in determining the application.

regards

Hugh

Hugh Craddock Case
Officer
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Please note that I work Mondays, Wednesdays and Thursdays (Registered in England and Wales, limited company number 7846516 Registered charity number 1144840)

Our campaigning works!
Help us continue our work to protect paths and open spaces

10

From: Steve Byrne
To: Helen Gilbert
Subject: Re: App 1876 CL 435 The Hallams (DMH Stallard Ref:297874-1)
Date: 06 June 2019 11:16:17
Attachments: image7b734d.PNG
image7fc74a.PNG
imagebbf544.PNG
image001.png

Dear Helen

Thanks for your e-mail (below) and the attached documents.

You know, I find all of this very odd. 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.

This isn't a question of ownership, let alone of the owner's sense of entitlement.

In a case such 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?

Take a look at [Attachments 1 & 2].

There have been some pretty strange cases brought forward under this legislation (e.g. a control tower whose curtilage is claimed to be the airport which it serves); but it's come to something when the determination of the extent of a house and its curtilage are taken to be a matter of archaeological investigation.

Have you ever come across the expression 'category mistake'? In a philosophical context, it applies where one entity (e.g. the mind or soul) is unwittingly discussed in terms appropriate to a completely different ***kind*** of entity (e.g. the body or physical world). In a legal context, it's the root cause of the kind of angels-on-the-head-of-a-pin debate that's being conducted here.

Best wishes

Steve Byrne
[2 x Attachments]

10

OBJECTION TO APPLICATION TO DEREGISTER CL.435 (APPLICATION REF NO APP 1876)
Steve Byrne
to:
commons.villagegreens@surreycc.gov.uk
09/08/2016 11:25
Hide Details
From: Steve Byrne [redacted]
To: "commons.villagegreens@surreycc.gov.uk" <commons.villagegreens@surreycc.gov.uk>,
History: This message has been replied to.

3 Attachments

1.CL.435RegisterMap.jpg 2.LandSection.jpg 3.SaleBrochure(2013).pdf

Dear Sir/Madam

OBJECTION TO APPLICATION TO DEREGISTER CL.435 (APPLICATION REF NO APP 1876)

I am writing to comment on and object to the application made to you under Schedule 2(6) of the Commons Act 2006 to deregister land at The Hallams, Blackheath (CL.435). The application reference number is App 1876. My personal details are as follows:

NAME: Steve Byrne
ADDRESS: [redacted]
E-MAIL: [redacted]
TELEPHONE: Not on phone
INTEREST: Member of public (no legal interest)

COMMENTS ON THE APPLICATION

(1). The application is made under Schedule 2(6) of the 2006 Act. The applicants, then, are required to show that the land in question was covered by a building or was within the curtilage of a building *at the time of its provisional registration under the 1965 Act and at all times since.*

(2). From the application map, it would seem that the intention is to deregister the whole of CL.435 (Attachment 1). This may be acceptable in the case of 'The Hallams' itself (i.e. the building). What is disputed here is the attempt on the part of the applicants to define the remainder of CL.435 as the 'curtilage' of this building.

(3). It is not clear from the Land Section (Attachment 2) whether CL.435 was registered under the 1965 Act as the result of a land application or a rights application. The entry refers to 'application No 914'. The same reference is noted in the Land Section of the register for a number of other CL units in the Blackheath area (CL.431, CL.432, CL.433, CL.434 & CL.436); and it is clear from the Decision Letters relating to these cases that 'application No 914' was – or involved – an application to register rights of common.

(4). I do not have access to the Rights Section of the register for CL.435 and I cannot say for sure that CL.435 was registered as the result of a rights application. However, the attached sales brochure for 'The Hallams' – which was produced in 2013 – refers to the past existence of rights of common over the 'garden of the property'. The latter is described as 'designated common land' from which 'the grazing rights have been removed' (Attachment 3, p 10).

(5). In this light, it seems very likely to me: (i) that at least a part of CL.435 must have been subject to rights of common; and (ii) that these rights – though they may have subsequently been 'removed' – were finally-registered as such under the 1965 Act. The extent of the area involved should be evident from the entries in the Rights Section of the register for CL.435.

(6). By definition, land that is subject to rights of common (i.e. common land as it is defined at common law) cannot form part of the curtilage of a dwelling. If, then, any part of CL.435 was at any time subject to rights registered under the 1965 Act as rights of common, this land could not come within the criteria stipulated by Schedule 2(6); and it could not, therefore, be subject to deregistration under Schedule 2(6) (see: *para (1)* above).

Could you please acknowledge receipt of this e-mail.

Yours faithfully

Steve Byrne
[redacted]

[3 x Attachments]
[Attachment 1: Register Map (CL.435)]
[Attachment 2: Land Section (CL.435)]
[Attachment 3: 2013 Sales Brochure for 'The Hallams']

Figure 1 – Front aspect The Hallams

Figure 2 – Rear aspect The Hallams

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