

ADVICE

1. I did not retain my old papers but the Heritage Collective Assessment dated 28/05/2019 is a useful narrative.
2. The application made under Sch.2, paragraph 6, to the Commons Act 2006 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 24/09/1968); (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 1/08/1972); and (d) that since 1968 the relevant land has been covered by a building or else has been within the curtilage of a building.
3. It was my preliminary view that the undeveloped land on the eastern side of the registered land was managed land whereas the undeveloped land on the western side comprised of woodland and had little or no functional association with the main house and its surrounding land. As far as the objectors are concerned, the Open Spaces Society (OSS) say that they 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’*. In his case, I found Mr. Byrne’s email to Helen Gilbert dated 6/06/2019 difficult to understand although the attachments showing photos of the Hallams are obviously very useful. If he wishes to pursue his objection he must send the registration authority a clearer objection statement.
4. Consistently with (a) my preliminary advice; (b) with the view of the OSS; and (c) Mr. Parry’s report (see para/30), DMH Stallard offer, on behalf of the applicant, the revised plan at Figure 7 (on p.10) as the preferred application land which, in effect, excludes the unmanaged woodland to the north and west of the main building, leaving the land edged and shaded blue to be de-

registered where it falls within the registered land (green boundary). The alignment on the south-west side of such land follows the remnant of a walled boundary which Mr. Parry plausibly suggests 'a separation between the garden and the rest of the land south-west of the house' (see para/29).

5. The issue obviously concerns the extent of the curtilage land which involves considerations of physical layout, scale and evidence as to the nature of the uses to which the material land has been put and is, as it seems to me, essentially a question of fact or degree for the registration authority. The legal principles in determining the curtilage of a building have also recently been addressed in *Challenge Fencing Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 553 (Admin), a case involving certificates of lawful use or development.
6. I suggest that we take the matter back to the OSS and to Mr. Byrne (as the only objectors to the application). If they are amenable to the landowner's revised plan it seems to me that I should be instructed to carry out an accompanied view of the site with the owners or their representatives and (should they wish to attend) representatives of the objectors. Before the site visit I would also like to see the application file and the initial report dealing with the curtilage issue dated April 2016. I would also wish to hear more about Mr. Parry's professional profile. After I have visited the site I will give the applicant/objectors 14 days in which to make any further written representations and to produce any legal authorities which, on the face of it, is likely to be unnecessary if the revised plan is acceptable. I will thereafter prepare a report containing my recommendation on the application based on what I have seen and read about the application and what I will have gathered on my accompanied view of the site.
7. On the other hand, if one or other (or indeed both) of the objectors object to the owners' revised plan I would expect them to produce to the registration authority (in advance of the site visit) a revised plan or plans showing the area which they contend falls within the curtilage of the buildings. I would also expect them to attend the accompanied view in order that they might explain

their plans to me. If their objections persist there may be a need for a hearing after the site visit (preferable on the same day).

8. At the moment, I am not inclined to think that a formal hearing is necessary after the site visit as I shall take a full note of what is said to me and photos on my visit. I shall also give interested parties every opportunity of showing me where the curtilage runs on the land and why, using what plans they produce before or at the time of the site visit. I therefore suggest that this advice should be circulated amongst the interested parties. If a formal hearing is requested at any stage with elaborate directions allowing representations and other evidence to be produced at a hearing after the site visit I will need to consider this but, for the present, it seems to me that the way ahead can be as set above. In other words, a date should now be set for an accompanied site visit with the objectors making it plain where they stand on the revised application plan before-hand producing such modified curtilage plans as they see fit for discussion on site.

William Webster

3 Paper Buildings

Temple

8 August 2019

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