

TOWN AND COUNTRY PLANNING ACT 1990

45 KENTISH LANE, BROOKMANS PARK, HERTFORDSHIRE, AL9 6NG

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR A PROPOSED
REPLACEMENT STABLE BLOCK WITH GARAGE**

LPA REF: S6/2012/0348/LUP

**SUPPLEMENTARY STATEMENT IN RESPECT OF THE MATTER OF
CURTILAGE**

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INTRODUCTION

- 1 This statement has been prepared to accompany the above application for a certificate of lawfulness and should be read in conjunction with the main statement on the matter of curtilage.
- 2 This supplementary updates that main statement by highlighting the relevance of a recent enforcement notice appeal decision at Land at Bramley House, Epsom Road, West Horsley, Surrey KT24 6AP ('The Guildford appeal'). A copy of this decision is attached as appendix 1

THE GUILDFORD APPEAL

Paragraph 2

- 3 The barn in the Guildford appeal is noted as being about 58m from the main dwelling. The garage the subject of this application would be some 50m from the house.

Paragraph 8

- 4 The court cases referenced here are also referred to in the main statement on the matter of curtilage.

Paragraph 11

- 5 Here the Inspector remarks that *'In visual terms, the constituent elements of the garden are read with the house and are not separated from one another by distinctive boundary features, albeit that there is some low hedging at the rear of the formal area'*. This is a similar (but more distinct) relationship to that found in this case.

Paragraph 13

- 6 Here the Inspector remarks that *'...the garden area may be said to be relatively large in terms of residential curtilage. However, in my experience, curtilages of such a size are not uncommon, particularly in rural areas'*. This confirms that a residential curtilage need not necessarily be a small area.

CONCLUSIONS

- 7 The above factors lend significant weight to the case that all of the land edged red on submitted drawing no 11015/14 can be regarded as being within the curtilage of the dwelling at no 45 Kentish Lane.

APPENDICES

1. Appeal decision at Land at Bramley House, Epsom Road, West Horsley, Surrey KT24 6AP



Appeal Decision

Hearing held on 7 February 2012

Site visit made on 7 February 2012

by James Ellis LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 March 2012

Appeal Ref: APP/Y3615/C/11/2161968

Land at Bramley House, Epsom Road, West Horsley, Surrey KT24 6AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeal is made by Mr B Lewis against an enforcement notice issued by Guildford Borough Council.
- The Council's reference is EN/10/00034.
- The notice was issued on 6 September 2011.
- The breach of planning control as alleged in the notice is without planning permission, operational development namely the erection of a timber barn building, known as the "American Barn".
- The requirements of the notice are to demolish the American Barn and remove all resulting material from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e), (f) and (g) of the Act.

Summary of decision: the appeal is allowed and the enforcement notice is quashed

Background

1. Bramley House is a detached house which lies to the south of Epsom Road. The house is set back from the road and reached by a long driveway. There is a detached garage at the western side of the house and immediately beyond this is a stable block that can accommodate four ponies/horses. Behind the stable block there is an open fronted hay barn and beyond this, further back into the site, is another building which was being used for storage purposes at the time of my site visit.
2. The building which is the subject of the enforcement notice ("the American Barn") is also behind the house and is, I am told, about 58 metres away from it. The American Barn, which is constructed of dark stained wood on a concrete base, currently contains four stables, an area which is used as another stable, a tack area, and a feed/hay storage area. I understand that the American barn measures approximately 12.2 x 14.4 metres and has a ridge height of 4 metres. The land to the rear of the house, including the American Barn has been fenced off from land to the east (also in the ownership of the appellant and his wife) which is used for equestrian purposes. Bramley House is located in the Green Belt, outside an identified settlement area, and within an Area of Great Landscape Value for the purposes of the Guildford Borough Local Plan, adopted in 2003.

The ground (e) appeal

3. The appeal under ground (e) of section 174(2) of the Act is that the enforcement notice was not served on everyone with an interest in the land. Here, the appellant is alleging that the Council failed to serve copies of the notice on two chargees of the land and that those chargees were prejudiced by this failure. On the other hand, the Council is seeking reliance on section 172(2) of the Act which states that a copy of the notice shall be served: (a) on the owner and occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. In this case, the Council accepts that chargees were not served with copies of the notice but contends that the chargees' interests are not materially affected by the notice.
4. The chargees' interests in the land are of a financial nature and I was told by the appellant that they relate to about 75% of the value of the property which is owned by him and his wife. The charges were entered into before the American Barn was erected and even if it had to be taken down in the event that the appeal was to be dismissed, the chargees would be in the same position that they were in before the barn's erection. Any finding of mine on the extent of residential curtilage could impact on the value of the property. However, given the extent and nature of the property, and the relation of the charges to the value of the property, I do not think that this would have a material impact on the interests held by the chargees.
5. The appellant contends that the chargees are prejudiced because they could ultimately face criminal proceedings as a result of the notice being issued. However, the chargees could only be prosecuted if they were to become owners of the appeal property in the future at a time when the requirements of the notice had not been met. If this situation was to occur, it would be open to the chargees to comply with the notice. Also, in terms of possible prejudice, I note that the chargees have not been given rights of appeal. However, the appellant has, with the aid of an experienced professional agent, lodged a comprehensive appeal on a number of grounds. Even if the chargees had appealed against the notice, I cannot see how they could have added to the case put forward on behalf of the appellant.
6. Overall, I therefore conclude that the chargees' interests have not been materially affected by the notice and that the chargees have not been prejudiced because the Council did not serve copies of the notice upon them. The appeal on ground (e) therefore fails.

The ground (c) appeal

7. The appeal under ground (c) of section 174(2) of the Act is that the matters stated in the notice do not constitute a breach of planning control. In support of his appeal, the appellant contends that the American Barn is permitted development by virtue of Article 3 and Class E of Part 1 of the second schedule of the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO"). Class E refers, amongst other matters, to the provision within the curtilage of a dwellinghouse of any building which is required for a purpose incidental to the enjoyment of the dwellinghouse as such. The appellant says that, in his view, the American Barn is within the curtilage of the dwellinghouse at Bramley House and that the various tolerances of Class E are met by the building. However, the Council does not accept that the American

Barn is within the curtilage of the house and, also, does not consider that the barn is required for a purpose incidental to the enjoyment of the house.

8. The appellant drew my attention to the case of *Sinclair- Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195. This establishes that to fall within a curtilage of a building, it is enough that the land serves the purpose of a building in some necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. Generally, curtilage is confined to a small area about a building. The case of *Dyer v Dorset County Council* [1988] 3 WLR 213, as mentioned by the Council, endorsed the Oxford English Dictionary definition of curtilage as: 'A small court, yard, garth or piece of land attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling and its outbuildings'.
9. The appellant contends that the residential curtilage of Bramley House includes an area shown edged in red on plans attached to three statutory declarations submitted in support of the appeal. The land in question includes the site of the American Barn. A former owner of Bramley House, Eric Hewitt, states that in 2001 he and his wife obtained planning permission for 4 stables, a tackroom and an open barn at the property and that after this, his family fenced the domestic garden at the property, this being the area of land edged in red. He then goes on to say that the garden area was subsequently used as garden and amenity space and that land edged blue on the plan was used as a paddock and separate from the garden. Mr Hewitt was in attendance at the site visit, when the hearing was still in session, and told me that the fencing had been carried out in August 2001. He recalled it being very hot. In the absence of any evidence to the contrary from the Council, I am therefore satisfied that the garden area was fenced off more than ten years before the enforcement notice was issued.
10. A declaration made by the appellant states that the garden area has been used as garden/amenity space by he and his family since he and his wife purchased the property in November 2005. The third declaration was made the appellant's surveyor which refers to a survey drawn in February 2006. The survey shows the garden area identified as amenity space with the locations of various trees marked.
11. As I saw on my site visit the area referred to as the garden area has been fenced off from the land to the east which is used for equestrian purposes. Within the garden area are the buildings which received permission in 2001. There is a small area of formal garden immediately behind the house and beyond this there is a larger less formal area which is grassed over and has gravel tracks across it. There are a number of fruit trees within the less formal area. In visual terms, the constituent elements of the garden are read with the house and are not separated from one another by distinctive boundary features, albeit that there is some low hedging at the rear of the formal area.
12. At the hearing, I asked one of the Council's representatives to mark on a plan what she thought was the extent of the residential curtilage at the rear of the house. A line drawn by the representative crosses the garden area from a point somewhere between the hay barn and the building which is used for storage purposes to a point on the boundary between the garden area and the land used for equestrian purposes. The fruit trees on the less formal area lie

beyond the line. The representative could recall visiting Bramley House in 2001 and 2005 and having to cross through an 'orchard area' to reach that part of the garden area where the American Barn now is. I consider that the line drawn by the Council's representative is somewhat arbitrary although, in fairness to her, she did say that it was difficult to place such a line on a plan. To my mind, this illustrates that if the whole of the garden area at the rear of Bramley House is not residential curtilage, it is difficult to define what the curtilage might otherwise be.

13. The American Barn is some distance away from the dwellinghouse at Bramley House and the garden area may be said to be relatively large in terms of residential curtilage. However, in my experience, curtilages of such a size are not uncommon, particularly in rural areas. One also has to take into account the fact that the garden area is part of a larger holding owned by the appellant and his wife, much of which is used for equestrian purposes. There is evidence before me, on behalf of the appellant, that the garden area was fenced off from the equestrian area in August 2001. Moreover, the evidence before me suggests that the land in question and the buildings upon it have subsequently been used for purposes closely associated with the dwellinghouse.
14. After taking all matters into account (including what I saw on my site visit and the case law referred to by the parties), I therefore find, as a matter of fact and degree, that the residential curtilage of the Bramley House does extend to all of the rear garden area shown edged red on the plans attached to the statutory declarations. It follows from this that I also find that the American Barn has been erected within a residential curtilage.
15. Class E of Part 1 of the second schedule to the GPDO contains a number of tolerances in Class E.1 with regard to ground area and height etc. It is accepted by the Council that the American Barn would meet those tolerances. However Class E only permits buildings which are required for purposes incidental to the enjoyment of dwellinghouses as such. I now need to consider whether the American Barn is required for purposes incidental to the enjoyment of the dwellinghouse at Bramley House.
16. Class E.4 of Part 1 (referring to the interpretation of Class E) states that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The appellant and his family currently have five horses and this would increase this to six in the event that the appeal were to be allowed. The horses are required for a hobby that is enjoyed the appellant and his family. I understand that a son of the appellant enters competitions and now wishes to take up hunting for which he will need another horse. There is evidence before me which demonstrates that there is sufficient land in the control of the appellant (land at Bramley House and rented land to the west) to support the keeping of six horses. To my mind, the keeping of six horses at Bramley House would therefore be incidental to the enjoyment of the dwellinghouse.
17. The existing stables could provide accommodation for four animals but, as I saw on my site visit, these stables are somewhat compact and appear to be more suitable for ponies as opposed to the larger horses which the appellant and his family now keep. In front of the stables and the adjoining barn there is a concrete apron which has a change in levels. This was slippery in places at the time of my site visit and I accept the appellant's contention that it could be

dangerous to members of his family or to horses during certain weather conditions. The existing stables are also in close proximity to the dwellinghouse and I understand that there have been problems with noise and smell from horses, as well as infestations of rats and other vermin. I note that the appellant also has planning permission for a replacement house. This would again be in close proximity to the stables.

18. After having regard to the above, I consider that the existing stables are deficient in terms of providing accommodation for the appellant's horses and that there are problems associated with the location of the stables in relation to the existing dwellinghouse and its replacement.
19. The Council considers that the four existing stables within the American Barn together with the tack area and feed/hay area could be accommodated within a smaller building. In this context, the Council also referred to the existing hay barn which could be used for storage purposes. The Council therefore believes that the size of the American Barn exceeds that which could reasonably be considered to be 'incidental'.
20. As I saw on my site visit, the current layout of the American Barn has stabling for some four or five horses although it could be adapted to provide six stables. The appellant explained that he had not done this to date because he did not wish to incur wasted expenditure in the event that his appeal was to be dismissed. The building could also accommodate all the tack, rugs, hay and feed for the horses. Areas within the building could be used for grooming and preparing the horses rather than this being done in the open as previously.
21. I note the Council's concerns and appreciate that the American Barn does provide more extensive accommodation than some 'traditional' forms of stable buildings. However, it seems to me that the American Barn is genuinely needed to accommodate up to six horses owned or under the control of the appellant and his family. The size and layout of the American Barn are such that it would provide a high standard of accommodation for those horses, and the keeping of tack and hay etc. under one roof would be of considerable benefit to the appellant and his family when carrying out their hobby. Moreover, use of the American Barn would not impinge on the living conditions of the occupiers of the existing dwellinghouse or a replacement dwellinghouse, in the same way that use of the existing stables would do. I am therefore satisfied that the American Barn is reasonably required for a purpose incidental to the enjoyment of Bramley House.
22. I therefore conclude, on the balance of probabilities, that the American Barn is permitted development under Article 3 and Class E of Part 1 of the second schedule of the GPDO. It follows that the matters cited in the enforcement notice do not constitute a breach of planning control and that the appeal on ground (c) should succeed.

The ground (a), (f) and (g) appeals

23. Given that the appeal on ground (c) succeeds, the appeals on ground (a), (f) and (g) do not fall to be considered.

Formal decision

24. I allow the appeal and quash the enforcement notice.

James Ellis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mark Carter BA(Hons), LLB (Hons), MRTPI, FRGS, Barrister	Carter Planning, Town Planning and Development Consultants
Barry Lewis	Appellant
Eric Hewitt	Former owner of Bramley House

FOR THE LOCAL PLANNING AUTHORITY:

Joanna Bell MRTPI	Principal Planning Officer, Guildford Borough Council
Beckie Green	Planning Enforcement Officer, Guildford Borough Council

INTERESTED PERSONS:

Peter Bennett-Davies	Vice-Chairman, West Horsley Parish Council
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DOCUMENTS

- 1 List of suggested planning conditions provided by the Council

PLANS

- A Plan produced by the Council showing the appeal site with the position of the American Barn marked with an 'x', and a dotted line marking the Council's estimate of the extent of residential curtilage

PHOTOGRAPHS

- 1 Aerial photograph taken in 2006 – from Surrey County Council's 'Maps' website – produced by the appellant

45 KENTISH LANE, BROOKMANS PARK, HERTFORDSHIRE, AL9 6NG



This photograph shows no clear physical or visual break between the two parcels of land.

45 KENTISH LANE, BROOKMANS PARK, HERTFORDSHIRE, AL9 6NG



2000 Image



2005 Image