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**THE SPINNEY, HIGH ROAD, ESSENDON, HERTS AL9 6HP**

**Legal Opinion**

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**1 Scope of instructions**

1. I have been asked to provide a legal opinion as to the extent of the residential curtilage of The Spinney, High Road, Essendon (the Spinney).

1.4 In order to provide this opinion, I have been given:

- 131 individual photographs of the Spinney and its grounds
- Detailed location plans of the property; and
- A tree report prepared for a previous planning application.

**2 Description of the proposed development**

2.1 The Spinney is a detached dwelling-house located to the south of Essendon. The property is set within a large plot approximately 0.82 hectares and is bordered by the Essendon plantation to the north, and the Essendon golf club to the east and south. The B128 highway runs along the western boundary of the site.

2.2 The original dwelling-house is rectangular in shape and is set back from the road with access via a private drive. The boundaries of the site are densely treed with mature species.

**3 Legal Principles of Curtilage**

3.1 It is well established that curtilage is a matter of fact and degree. What constitutes the curtilage of a property will be very much dependant on the particular circumstances of the property being considered. However, there is some guidance that can be obtained from case law on the matter.

- 3.2 In *Dyer v Dorset CC* [1988] 3 WLR 213, the Court of Appeal held that in the absence of any legal definition, residential 'curtilage' bore its established English language meaning, namely, being an area of land forming part or parcel with the house or building it contained. What constitutes 'curtilage' for any particular property is a matter of fact and degree in each case.
- 3.4 In *Collins v Secretary of State for the Environment* [1989] EGCS 15, the court confirmed that the key characteristic of residential curtilage is that the land 'serves the dwelling-house in some necessary or useful manner'. The area of curtilage does not, however, need to be marked off or enclosed in any way (*Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P & CR 195.).
- 3.5 In *Secretary of State for the Environment, Transport and the Regions v Skerritts of Nottingham Ltd* [2001] Q.B. 59, the Court of Appeal held that the issue of curtilage was a question of fact and degree, and the concept of smallness did not assist in establishing how it should be determined. Indeed Lord Justice Walker stated, in paragraph 67 of his Judgment that "*the concept of smallness is in this context so completely relative as to be almost meaningless, and unhelpful as a criterion.*"

### **Extent of Curtilage**

- 3.6 The Spinney is set in extensive private gardens, a portion of which is wooded. There are areas of lawn to the rear of the house, which extend down to the southern boundary of the application site. A log store and machinery shed, which are solely used in connection with the main dwelling, are also included: one in the central portion of the site; and the other on the southern boundary. Plans and photographs showing the grounds are attached to this opinion at appendix one.
- 3.7 The entirety of the site within the red line application plan is in single ownership and has been sold as a single plot. From the information provided to me, it appears to comprise a single planning unit. Certainly, there are no obvious subdivisions on the ground; and historically the occupants have used the whole of the plot for domestic purposes. The logical conclusion is that the Spinney's residential curtilage comprises the entirety of the red line application site.

- 3.8 The Council has taken a view that the curtilage of the property is drawn much more tightly than this, being limited to the areas of lawn immediately adjacent to the house and located within the first 'ring' of trees shown on the plans. This presents a clear problem, as there is nothing on the ground to delineate where an artificially drawn residential curtilage ends, and some other tenure or land use begins.
- 3.9 If we are not to equate the curtilage of the Spinney with the extent of the legal title, enclosed within the defined boundaries of the site, then the question becomes where the boundary of the curtilage should properly be drawn. In other words, to use the test set out in *Collins v Secretary of State for the Environment* at which point do the grounds of the property cease to serve the Spinney in 'in some necessary or useful manner'.
- 3.10 It is my opinion that the clearly curtilage extends beyond the artificially small area identified by the Council. As previously stated, the obvious solution – and the one most likely to be adopted by a lay observer (or purchaser) – would be that the curtilage would extend to the entirety of the red- line application area. If you buy a house and garden, you assume that the latter relates to the former, unless there is some clear division on site – such as a fence- to suggest otherwise. Here there are no such divisions.
- 3.11 The lawn closest to the house is not enclosed and flows seamlessly between and under many of the trees, as shown on the many photographs at appendix one.
- 3.12 If, however, we are to look to define a smaller curtilage for the property (and, to repeat, I see no reason to do so), then the following features need to be taken into account.
- a) The line of trees which the Council has treated as the southern edge of the Spinney's Curtilage, and which bisect the area of lawn to the south of the property, do not appear from the photographs to mark any differentiation between the area on lawn on either side. The spacing and formation of the trees appears to be more of a decorative feature than an attempt at separation and the lawn extends beyond them, uninterrupted, to the southernmost boundary of the property – which is clearly defined by natural features. This entire area of lawn appears to be garden.

b) To the west of the Spinney is a private driveway, which leads off the public highway and is currently the sole vehicular access to the site, just beyond this, again to the west is a wood or log store. This building is linked to the drive by way of a path which can be seen, marked out, on the ground. The Spinney has a log burning fire place, which has been in place for some time and the sole purpose of the wood store is to act as a storage place for fuel for the property itself. As such, the wood store is not only ancillary to and directly connected with the Spinney but also serves it in a necessary and useful manner. As such, it and the land at least as far as it, should be treated as part of the curtilage of the property itself. That being the case, there is no sensible reason to draw a line between the shed and the site boundary only a few metres behind it.

c) There is also a machinery shed on the southern boundary of the site, at the edge of the lawn area described in a) above. I understand that the past and current use of the shed has, in essence, been as a garden shed and ancillary storage serving the Spinney. It currently contains a ride-on mower. As such, it is also ancillary to and directly connected with the Spinney and serves it in a useful manner. The shed has mains electricity with a substation located in the wooded area of the gardens.

d) There is a septic tank south of the house, the drain for which runs through the southern part of the plot and has an outlet outside of the boundary on land belonging to the Bedwell Park Estate. There is a drain cover somewhere along the run within the southern part of our plot.

3.13 If we are looking to define a smaller area of residential curtilage, within the redline site, then a reasonable approach, would be to define its boundaries in relation to the features described above. i.e. to include the area of lawn or garden to the south of the property, the drive way and both ancillary buildings. This would exclude only the area of amenity woodland in the south-west corner of the garden; although this would be a very artificial exclusion, as there is nothing on the ground to suggest that the use of the garden changes at any point and this area also appears to be used as a wooded area of garden.

#### **4. Conclusion**

4.1 The curtilage of the property extends to the entire of the garden, including all of the trees, contained within the site boundary.

4.2 If any lesser area is to be considered, this must include, at least both the outbuildings and the areas of lawn which appear to be garden land, and exclude only (and in my view artificially) the woodland area in the south west corner.

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