
APPEAL STATEMENT

Hill Rise | Station Road | Desford | LE9 9FP

Appeal Statement

1.0 INTRODUCTION AND BACKGROUND

1.01 This document provides supporting information in response to the Hinckley and Bosworth Borough Council decision to refuse a Lawful Development Certificate for the erection of a detached building.

1.02 Application 25/00797/CLP was for a Certificate of proposed lawful development for the erection of an outbuilding containing a swimming pool enclosure.

1.03 The application was for a detached outbuilding; Class E - buildings etc incidental to the enjoyment of a dwellinghouse.

1.04 The refusal notice states;

The proposed outbuilding exceeds 2.5m in height and it has not been demonstrated, on the balance of probabilities, that the outbuilding is sited more than 2m from the boundary of the curtilage of the dwellinghouse.

1.05 It is evident that there are no other issues concerning the application, save for the interpretation of curtilage.

1.06 The site has a lengthy planning history; including applications and Appeals.

1.07 The crux of Appeal decision (APP/K2420/X/20/3262446) revolved around the 'Inchley photograph' and its lack of clarity, the Inspector stated;

'it is not possible to see sufficient detail within the image due to its poor quality'

1.08 The refused application specifically sought to address this issue and the Inchley photograph has been enhanced to provide clarity and to overcome the matter of poor quality.

1.09 As a result of this process, it is now quite clear that bee hives and other buildings are present upon most of the land surrounding the dwellinghouse

1.10 Again, under the same Appeal, the Inspector states;

'...there is no detailed explanation as to how the land or the outbuildings were used at this time. Whilst the appellant suggests further statements can be provided if necessary, it is for the appellant to submit sufficient information in support of the appeal.'

1.11 The refused application specifically provided additional explanatory information to support its approval and to overcome the previous reasons for refusal.

2.0 THE REFUSED APPLICATION - 25/00797/CLP

2.01 Within the Officer Report it states;

3.3. Although there is extensive planning history associated with the property, its land has been the subject of lawful development certificate application 20/00749/CLP and appeal APP/K2420/X/20/3262446 where it concluded that there was insufficient evidence to suggest that a proposed outbuilding would be located on land within the curtilage of the dwellinghouse.

Following this application and appeal, a further application (21/01144/CLP) for an outbuilding garage/store was assessed and approved against Part 1 Class E of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) a site plan detailing a residential curtilage was submitted supporting this application.

2.02 It is apparent that the Inspector and the LPA agree that there was previously insufficient evidence put forward by the applicant for historical applications and Appeals, to support those applications.

2.03 Application 25/00797/CLP specifically sought to provide clarity and additional evidential information to support the application, to avoid any ambiguity and to respond to the decision by the LPA and Inspector.

2.04 Given the decision to refuse, it appears that the LPA has not sufficiently considered the submitted information that sought to clarify the matters raised within previous application/Appeals.

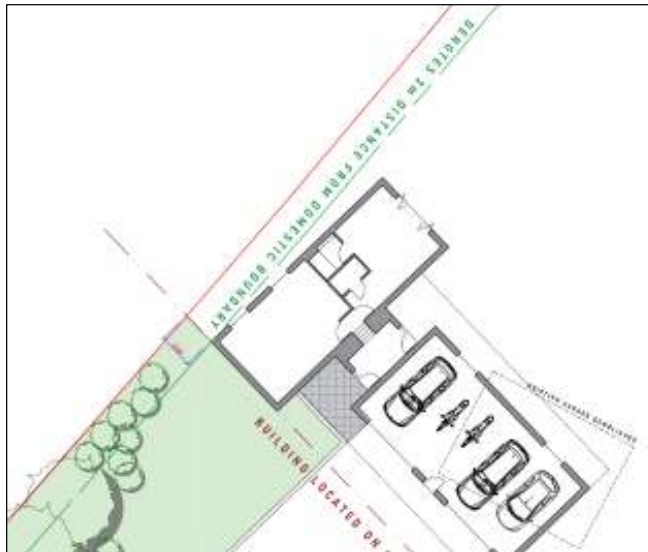
2.05 Within the Officer Report it states;

...an application was made in 2021 (Ref: 21/01144/CLP). To support this application, a site location plan (Drg. No. 001 – received by the Local Planning Authority on 13/09/2021) was submitted to support the proposals and which defined the residential curtilage as outlined the land to the rear of the application dwelling (approximately 5121.07 m²), and defined the parcel of land to the northeast (approximately 5687 m²) as outside the residential curtilage of the dwellinghouse.

2.06 Under point 3.3, of the same Officer Report, the LPA again reinforces their interpretation, on the matter of curtilage, and ultimately led to their decision to refuse;

'a site plan detailing a residential curtilage was submitted supporting this application'

- 2.07 The LPA further reference the extent of curtilage, by virtue of their quoted site areas.
- 2.08 Contrary to the statement by the LPA, the supporting statement for application 21/01144/CLP does not categorically define the extent of the curtilage, it states;
- 'the total curtilage is in excess of 5100m²'*
- 2.09 Irrespective of which application, appeal or decision is considered, it is fact that the curtilage is in excess of 5100m².
- 2.10 However, it is without doubt and contrary to the LPA statement, that the submitted drawing 001 does not state 'residential curtilage', it categorically states 'domestic boundary';



- 2.11 Their statement is factually incorrect.
- 2.12 If their conclusion has been reached based upon this incorrect assumption, they it is not a robust decision and is open to challenge.
- 2.13 Similarly, drawing 001 did not seek to define curtilage, it merely defined the red line boundary of the application.
- 2.14 This fact is reinforced by virtue of the statement upon drawing 001;
- 'denotes 2m from domestic boundary'.*

- 2.14 Looking at Appeal (APP/B1470/X/19/3239960) the use of historical information is referred;

7. In their case against the present appeal, the council appear to have given considerable weight to some aspects of the site's past history,

9. This part of the council's case is flawed in three ways...

...Third, the council apparently rely on the boundary shown on the 1964 and 2010 planning applications as evidence of the extent of the curtilage relevant to the certificate application. But the question whether the proposed building would be within the curtilage of the house has to be decided having regard to the situation at the date of the certificate application.

- 2.15 This Appeal decision confirms that the LPA should deal with the information provided to it at the date of the application.
- 2.16 Application 25/00797/CLP adequately showed, primarily through the use of aerial photography, the historical uses of the site.
- 2.17 The documents supporting application 25/00797/CLP sought to provide clarity and remove any ambiguity that had been shown by previous applications and Appeals.
- 2.18 The, now enhanced, Inchley photograph plays an important role in removing uncertainty in the previous use of the land and proves that around 20 years ago, the whole of the property was essentially all curtilage.
- 2.19 The LPA do not seek any additional information or clarification concerning the use of the land for bee keeping (as clearly shown upon the Inchley photograph).
- 2.20 As already stated within the supporting statement, such incidental uses are specifically included within the GPDO;

Interpretation of Class E

E.4. 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

- 2.21 If, as the LPA now suggest, that the curtilage did not include the areas showing the bee hives, then it must have been an unlawful development as, in their opinion, it was outside of the curtilage.
- 2.22 However, there has never been any enforcement action taken by the LPA in respect of this use.
- 2.23 It is due to the fact that these incidental uses occurred within the curtilage of the residential dwelling, for which there is no opportunity for enforcement action.

3.0 DWELLING HISTORY

- 3.01 The applicant purchased Hill Rise late 1998 and the surrounding land, i.e. the curtilage, contained a range of buildings and uses as shown upon the Inchley photograph, including;

Bee hives
Vegetable patches
Barns/garages
Breeze block building (at the rear of the dwelling)

- 3.02 The dwelling was in a state of disrepair so, for around 12 months, the applicant lived in a static caravan. Allowing them to work on the house for around 2 years, preparing it for moving back in.
- 3.03 Over time, the applicant has carried out various works to the grounds of the property, at times fencing has been erected to segregate an area for their children to play football.
- 3.04 At one point, part of the land had become overgrown whilst works to the dwelling were carried out. However, this formed a perfect area for the children to play on their quad bikes.
- 3.05 The overall landholding of approximately 4 acres has at times been difficult to manage, hence the introduction of smaller zones, allowing a balance between family life and managing smaller play areas for the occupants of the dwelling.
- 3.06 As confirmed in the supporting statement, the applicant admits that they have introduced fencing, planting, trees, etc. during the course of their ownership over the past 27 years.
- 3.07 There has been no concealment by the applicant.
- 3.08 Within the space of a couple of years of occupation, the applicant had removed the bee hives and most of the detached outbuildings surrounding the property.
- 3.09 The aerial photograph from December 1999, shows a distinct area maintained and mowed, for use as a football play area. Between that area and the dwelling, a tree line is evident.
- 3.10 In the July 2000 photograph, it can be seen that the cleared area has been enlarged and that the tree line has been thinned. The summer house, midway between the dwelling and the rear boundary is evident.
- 3.11 A blue roofed building/structure is also present at this time.

- 3.12 By 2011, there appear to be two quite clear 'zones'; the area to the rear of the dwelling and the area to the right (north east) of the dwelling.
- 3.13 A timeline of appearance has been well documented within the supporting statement, however what is apparent is that the curtilage has changed over the course of time.
- 3.14 It is quite evident that prior to the purchase of the property by the applicant the whole of the landholding was used as curtilage. The presence of buildings and uses all incidental to the enjoyment of the dwellinghouse.
- 3.15 Over the course of time the surrounding land has been used, on and off, for different uses; some has become overgrown, some areas maintained and cleared.
- 3.16 The crux of this application is firstly the acceptance that the whole of the land holding was, at some point in the past, domestic curtilage as shown on the Inchley photograph.
- 3.17 If it is accepted, which on the balance of probability the enhanced Inchley photograph shows, that the land is domestic curtilage then we have to consider how it has changed over the course of time and how that has, or has not, affected the curtilage.
- 3.18 It is accepted, and confirmed within the application documents, that the applicant has changed the land through a series of processes; maintenance, planting trees/hedges, erecting fences, leaving areas unkempt. Then we have to accept that the curtilage has changed.
- 3.19 If we are to accept that these changes have affected the curtilage, we must also accept that the removal of the same features erected by the applicant, the upkeep of previously uncultivated areas and the removal of fencing erected by the applicant, has the same ability to affect, and change, the curtilage.
- 3.20 However, it is a matter of fact and degree as to which of these elements may, or may not, have been detached from their original use as residential curtilage.
- 3.21 None of the works undertaken by the applicant have existing for a period in excess of 10 years, fencing has been erected and then removed. Trees and hedges have been planted and then removed, areas of the land have been cleared, left to overgrow and then cleared again.

- 3.22 Appeal decision APP/V2635/X/22/3294156 confirms that curtilage can change;

Curtilage defines an area of land in relation to a building, and not a use of land. It is not fixed for all time; its physical extent is readily capable of changing at any time

- 3.23 That is the case of Hill Rise, through planting of trees and shrubs, however it does not result in the land being removed from residential curtilage

- 3.24 In accordance with the argument put forward with the application, further Appeal decisions confirm that curtilage can change and become incorporated into curtilage;

Curtilage defines an area of land in relation to a building, and not a use of land. It is not fixed for all time; its physical extent is readily capable of changing at any time. From the Court of Appeal's judgement regarding the case of Sumption v LB Greenwich & Rokos [2007] EWHC 2776 (Admin) it has become clear that land can very easily be incorporated into curtilage.

- 3.25 As has been put to the LPA within the application, the land holding was originally all curtilage and that, over the course of time, it may well have been considered to have reduced in size, become parcels having other uses, however in the position it now stands the whole of the land has been returned back to a single curtilage;

Historical authority on this issue is Sinclair-Lockhart's Trustees v Central Land Board [1950] 1 P. & C.R. 195, where it was held that: "The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way.

- 3.26 The LPA has not undertaken any form of site visit to inspect the property as it now stands. Therefore, their assumptions based upon historical applications, Appeals and information is not a true representation of the property as it stands at the time of the application.

- 3.27 To refuse the application, with the benefit of physically viewing the property is open to challenge.

- 3.28 In any event, the position of the applicant is that the whole site (as shown in the Inchley photograph) was used as domestic curtilage in its entirety.

- 3.29 Changes have occurred and, as supported at Appeal, this is not uncommon, however we now find that the whole site is again used in its entirety as domestic curtilage.

- 3.30 A site visit confirms this fact.

4.0 THE INCHLEY PHOTOGRAPH

- 4.01 At the core of the previous Appeal (APP/K2420/X/20/3262446) at Hill Rise was the Inchley photograph.
- 4.02 The image was provided in its 'raw form'; a low quality scan of a small photograph, taken by a poor quality camera.
- 4.03 Understandably, given the quality of the photograph the Inspector states;

9. The appellant has provided an undated aerial photograph described as the 'Inchley's aerial photo'. What appears to be the main dwelling can be seen surrounded by vegetation. The appellant suggests that the photograph shows outbuildings as well as established use of the gardens and vegetable patches, however, it is not possible to see sufficient detail within the image due to its poor quality.

Furthermore, there is no detailed explanation as to how the land or the outbuildings were used at this time. Whilst the appellant suggests further statements can be provided if necessary, it is for the appellant to submit sufficient information in support of the appeal.

- 4.04 In conclusion of that Appeal;

17. Thus, for the reasons given above, in my view, the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the outbuilding would be located on land within the curtilage of the dwellinghouse.

- 4.05 Given that the Inchley photograph was pivotal in the previous Appeal decision, it was extremely important to enhance that image using specialist photography equipment and software.
- 4.06 The image was enhanced, solely in quality and not content, by a professional photography studio. The enhancement of the image quality and colouring provides the clarity that simply did not exist at the time of the previous Appeal decision.
- 4.07 The quality now is, without doubt, able to show the uses of the land at the time it was taken.
- 4.08 Given the clarity that the photograph now provides, on the balance of probability, the uses at that time are all for purposes incidental to the enjoyment of the dwellinghouse.

5.0 FURTHER APPEAL DECISIONS

5.01 On the matter of curtilage and case law;

7. As set out in Burford v SSCLG and Test Valley BC [2017] EWHC 1493 (Admin), interpretation of the word curtilage is a judgment for the decision-maker given the ordinary meaning of words and is a matter of fact and degree. Case law has established three tests to assist in the determination of curtilage:

- (i) physical layout of the building and the land said to be in the curtilage.*
- (ii) ownership (past and present) and*
- (iii) use or function (past and present).*

5.02 The current physical layout is that of a domestic garden, bounded by hedging and other enclosures.

5.03 The whole of the application site is owned by the applicant.

5.04 As shown in the Inchley photograph, the whole of the site has been used as domestic curtilage.

5.05 If it quite feasible that, over the course of time, the curtilage has altered, perhaps due to the overwhelming size of the property and the time pressures of family life.

5.06 However, it is important to accept that none of the intervening alterations, landscaping, fencing, etc. have remained for a period in excess of 10 years.

5.07 There has therefore been no permanent change to the original use and curtilage.

5.08 Appeal decision APP/C3240/X/24/3343388 gives further assistance;

3. The evidence provided points towards the land having been used for purposes incidental to the residential use of the dwellinghouse

9. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

5.09 As is the case at Hill Rise, the evidence contained within the Inchley photograph ‘points towards the land having been used for purposes incidental to the residential use of the dwellinghouse’.

5.10 The LPA has offered no evidence to contradict this position and, when combined with the aerial images provided at application stage, it is now sufficiently precise and unambiguous to show its curtilage.

5.11 As Appeal 3343388 states, it should be accepted.

6.0 SUMMARY

- 6.01 Previous Appeal decision APP/K2420/X/20/3262446 states;

*it is not possible to see sufficient detail within the image due to its poor quality
it is for the appellant to submit sufficient information in support of the appeal.*

- 6.02 The applicant did submit sufficient information in the application; the enhanced Inchley photograph and aerial photography, which were not available at the time of earlier applications and Appeal.

- 6.03 A detailed explanation covering the history of these uses was provided at the application stage.

- 6.04 The LPA gave no evidence to contradict the application documents, photographs and aerial imagery, choosing to rely on information from previous applications and constructing an argument, based upon their incorrect statement that such application stated domestic curtilage, when in it states domestic boundary.

- 6.05 The LPA did not visit the site to carry out any inspection of the application site. However, they have been able to determine and refuse the application.

- 6.06 Appeal decisions confirm that curtilage can change and, from the basepoint of the Inchley photograph, historically the whole of the site was domestic curtilage.

- 6.07 Over the course of the past 25 years the applicant has maintained several areas of the property, some has been left to over grow and then maintained, landscaping has been planted and then removed. Buildings have been demolished, buildings have been constructed, then subsequently demolished.

- 6.08 On the balance of probabilities, it has to be accepted that the whole of the site at some point in the past was wholly domestic curtilage and contained buildings and uses incidental to the enjoyment of the dwellinghouse.

- 6.09 Appeal decisions confirm that curtilage can change, both in reduction and enlargement.

- 6.10 As Appeal decision APP/C3240/X/24/3343388 states;

If there is no evidence to contradict their version of events... it should be accepted.

- 6.11 Contrary to the decision by the LPA, the proposed Class E Outbuilding is within the curtilage of the dwellinghouse, at a distance greater than 2m from the boundary and the LDC should be granted.