
SUPPORTING STATEMENT

Lawful Development Certificate Application

for

Class E - Swimming Pool Incidental to the Enjoyment of
a Dwellinghouse

at

Hill Rise, Desford

486-160625

1 INTRODUCTION

- 1.01 This document provides supporting information in respect of a Lawful Development Certificate application for a swimming pool, erected under the General Permitted Development Order, Class E building incidental to the enjoyment of a dwellinghouse.
- 1.02 The property is a domestic dwelling, there is no Article 4 directive and permitted development rights have not been removed.
- 1.03 The dwelling sits within extensive grounds, with parking to the front, garaging to the southwest
- 1.04 The property has an extensive planning history, of which the Appeal for application 20/00749/CLP is perhaps the most relevant to this current LDC application.
- 1.05 For permitted development the GPDO requires compliance with specific criteria and, whilst the majority is relatively simple, it is the matter of curtilage which is the key issue of this application.

2 CLASS E - OUTBUILDINGS

2.01 The GPDO permits detached outbuildings under; *Class E – buildings etc incidental to the enjoyment of a dwellinghouse*

2.02 *E. The provision within the curtilage of the dwellinghouse of -
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.*

2.03 By definition an enclosed swimming pool is permitted development, provided it is compliant with the criteria listed below;

E.1 Development is not permitted by Class E if -

2.04 *(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)*

Not applicable; the building was originally constructed as a residential dwelling

2.05 *(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);*

The ground covered by the proposal amounts to approximately 160m², given the extent of curtilage the proposal is well within the requirement of a maximum of 50%.

2.06 *(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;*

The whole building is positioned to the rear of the dwelling, it is not on land situated forward of the principal elevation

2.07 *(d) the building would have more than a single storey;*

It is a single storey building

2.08 *(e) the height of the building, enclosure or container would exceed—
(i) 4 metres in the case of a building with a dual-pitched roof,
(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
(iii) 3 metres in any other case;*

The height of the pitched roof is below 4m, the height of the flat section (albeit combined and forming a continuous part of the dual pitched roof) is below 3m

- 2.09 *(f) the height of the eaves of the building would exceed 2.5 metres;*
The height of the eaves is below 2.5m
- 2.10 *(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;*

It is not situated in the curtilage of a listed building
- 2.11 *(h) it would include the construction or provision of a verandah, balcony or raised platform;*

(i) it relates to a dwelling or a microwave antenna;
(j) the capacity of the container would exceed 3,500 litres

Not applicable
- 2.12 *(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)*

Not applicable
- 2.13 *E.2 In the case of any land within the curtilage of the dwellinghouse which is within-*
(a) an area of outstanding natural beauty;
(b) the Broads;
(c) a National Park; or
(d) a World Heritage Site,

Not applicable
- 2.14 *E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.*

Not applicable
- 2.15 *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.

Not applicable
- 2.16 The building is compliant with the requirements of the GPDO.
- 2.17 However, given the previous planning and Appeal decisions, further exploration of the definition of curtilage has to be considered in order for the application to be wholly compliant.

3 CURTILAGE

- 3.01 Turning to the Appeal decision APP/K2420/X/20/326446 (Hill Rise Desford) at point 7 the Inspector summarised that;

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)

- 3.02 Ultimately, as confirmed at point 9, the onus is upon the applicant to provide sufficient information in support of the Appeal.

- 3.03 For whatever reasons, the information submitted for the above Appeal did not sufficiently explain the historical and current position of the property. The Inspector elaborated upon this stating;

'...understanding how the site has been used is vital in helping to determine the extent of the curtilage'

- 3.04 Various photographs were provided, however they lacked detail and were undated, consequently the Inspector was unable to afford them any weight.

- 3.05 Whilst undated, the Inspector did refer to the photographs in their decision;

'...the photographs show the land in question was delineated from the main dwelling by vegetation. This suggests it was physically and functionally separate from the main dwelling'

- 3.06 In the Inspectors' summarisation;

'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'

- 3.07 It is evident from this earlier decision that insufficient clarity had been provided to enable the Inspector to arrive at any other decision.

- 3.08 This application seeks to provide additional information to support the current position in respect of curtilage for the dwelling.

- 3.09 As part of this application, it is important to supplement the previous Inspectors comments with additional Appeal decisions, to aid the definition of curtilage, changes over time and the position as it now stands.

4 APPEAL DECISIONS

4.01 In decision (APP/V2255/X/19/3241797) the Inspector refers;

...the Court of Appeal decision in Methuen-Campbell v Walters [1979] 1 QB 525. In that case it was held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. It was possible that this may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway and so forth.

It is necessary to determine the status of the land from the factual situation existing at the date of the application. On the facts in Sumption the curtilage did extend over a 'recently expanded garden' where the land was clearly capable of such use, some work had been done to it, there was access to it and it was part of the land attached to the building and being enjoyed with it.

The High Court in Lowe v First Secretary of State [2003] EWHC 537 (Admin) found the judgment of Lord Justice Nourse in Dyer to be of most assistance to conclude that: "The expression 'curtilage' is a question of fact and degree. It connotes a building or piece of land attached to a dwelling house and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers.

The concept of "curtilage" was more recently reviewed by the High Court in Burford v SSCLG [2017] J.P.L. 1300 where it was noted that the use of land as incidental to the enjoyment of a dwelling house is not determinative of the land being curtilage. The case reaffirmed the criteria laid down in Attorney General ex rel. Sutcliffe and Others v Calderdale Borough Council [1983] 46 P&CR 399 for identifying curtilage, namely: (1) the physical layout of the [listed] building and the structure; (2) their ownership, past and present; (3) their use or function, past and present. The decision is also particularly relevant as it concerned the application of Class E of the GPDO, as arises here.

It was possible that this may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway and so forth. A curtilage may consist of more than one parcel of land, need not have been conveyed or demised together and might even fall within another, broader curtilage.

Clearly, it is possible for the extent of curtilage to change over time. When the application was made the land was used in conjunction with the dwelling as residential garden and had done so for some time.

4.02 From this decision there are several helpful elements relevant to the current application;

- land has to be intimately associated with the building
- the status of the land from the factual situation existing at the date of the application
- It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers.
- for identifying curtilage, the physical layout, ownership and past and present function are relevant
- curtilage can change over time

4.03 In decision (APP/R0660/X/20/3264261) the Inspector refers;

There is no all-encompassing, authoritative definition of the term ‘curtilage’. The matter has been the subject of extensive case law over the years, but the main principles derived from that case law have been distilled in the judgment of the High Court in Challenge Fencing Ltd. v SSHCLG [2019] EWHC 553 (Admin).

In summary, those principles are:

i) The extent of the curtilage of a building is a question of fact and degree

ii) The three ‘Stephenson’ factors of physical layout, the ownership past and present, and the use or function of the land or buildings, past and present must be taken into account

iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration

iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration

v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant

vi) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself.

The land on which the proposed outbuilding would be sited has a close physical relationship to the remainder of the appellants’ land and the main dwelling, being accessed from the latter by steps that form part of a rockery. It is contiguous with the areas of garden to the north and to the south of the dwelling.

At the date on which the application was submitted, the land was largely laid to lawn and formed part of the appellant’s garden.

The judgment in Challenge Fencing confirms that the relevant date on which to determine the extent of the curtilage is the date of the application, but that this will involve considering the past history of the site.

The Council’s Officer Report relies solely on photographic evidence. The aerial photograph taken in 1971-73 does appear to show the garden area to Bracken Hill tightly drawn around the dwelling, with the principal garden area being immediately to the north of the house but with no obvious association or linkage with the surrounding land

It is clear that a hedge separates the land to some extent, but there are significant gaps in that hedge which clearly provide linkage to the land by then enclosed.

The principal difference between the two areas, it seems to me, is that the area to the east is by then more heavily planted than in the previous photograph.

The area to the west is still open, and the gaps in the hedges are present providing a clear link between the two areas.

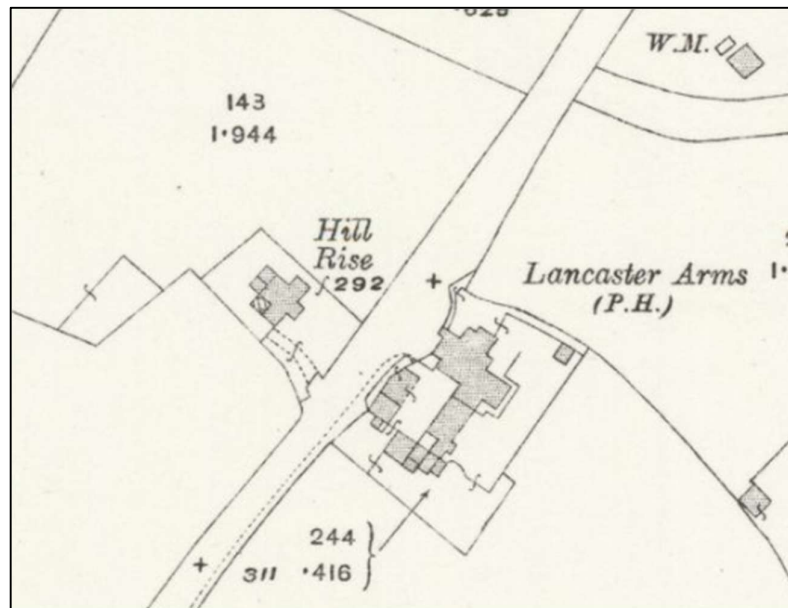
The photographs taken in 1971-73 show that the land to the west of Bracken Hill was clearly outside the residential curtilage of the dwelling at that time. However, by 1993-2003 the land to the west had been incorporated with that to the east to form one parcel of land.

It had a clear linkage with the eastern part of the site and an intimate relationship with the main dwelling.

- 4.04 Again, there are several helpful references to consider when determining the extent of curtilage;
- the extent of curtilage is a matter of fact and degree
 - three 'Stephenson' factors
 - curtilage does not have to be small
 - enclosure is relevant
 - determining the extent is the date of the application
 - hedges can separate land
 - significant gaps in hedging provide a clear link between two areas
 - curtilage can change over time
- 4.05 The current application site has a long history; from its original small dwelling in the early 1900's with distinct and clearly separated areas of curtilage, to the more recent position of a large extended dwelling with a far greater curtilage.
- 4.06 These changes have occurred over a number of years and for various reasons, which will be explored and explained over the next section.
- 4.07 Ultimately, this application seeks to add clarity to the information previously supplied in the application sites refused Appeal and to provide information that, on the balance of probabilities, explains the current position in respect of domestic curtilage.

5 SITE HISTORY & TIMELINE

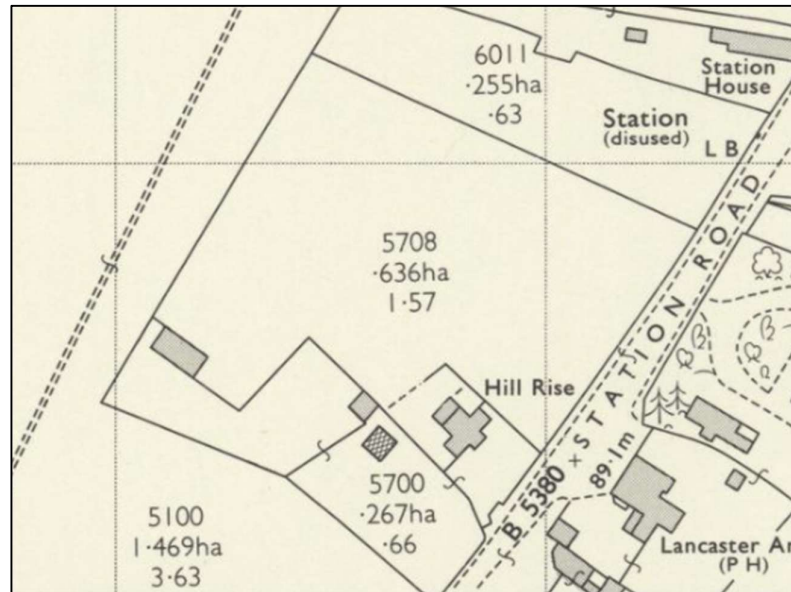
- 5.01 The property, as shown on the 1914 Ordnance Survey map (below) shows a detached building in a clearly defined curtilage, denoted by solid lines on the map;



- 5.02 The 1955 map shows the same detached dwelling with pockets of land separated by boundaries. By this time, the land has been further separated by the line running from the northwest corner to the northwest boundary.



- 5.03 The position in the 1972 maps, shows the removal of the 1955 boundary, running northwest/southeast, and the introduction of an opening (dotted line) to the now larger parcel of land.



- 5.04 Whilst the removal of one boundary and the presence of a dotted line doesn't specifically prove an increase in curtilage, it does emphasise Inspector Appeal comments; that boundaries and curtilage, can change over time.
- 5.05 The above are images from the National Library of Scotland, upto the late 1960's. Beyond this time Ordnance Survey moved from paper maps to microfiche and then computer based mapping.
- 5.06 However, for the period from the late 1990's to current, Google Earth provides additional information via aerial photography.
- 5.07 The applicant purchased the property in 1998 and soon afterwards the 'Inchley aerial photograph' was taken.
- 5.08 This photograph was submitted as part of the Appeal (326446 - the application site) however the Inspector stated that;
- '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'*
- 5.09 Looking at the information submitted as part of that Appeal, it appears that it was a small and very poor quality scan of the original photograph.

- 5.10 With more modern technology, the same photograph has been scanned to a more detailed and larger size.
- 5.11 A larger copy of the 'Inchley' photograph has been submitted as an application document, however for the purpose of this supporting statement a copy is below;



- 5.12 It is now possible to see the following features;
- The dwelling Hill Rise
 - The access to the front of Hill Rise
 - The access road leading off Station Road from the southeast
 - Two outbuildings to the northwest of the dwelling
 - A white roof building to the southwest of the dwelling
 - Buildings running northwest to southeast (the rear of a white vehicle can be seen amongst others)
 - Bee hives to the area immediately above the additional access point
 - Bee hives to the northwest boundary
- 5.13 With the larger Inchley photograph we are able, on the balance of probabilities, to determine the curtilage of the dwellinghouse extended to cover the land to the southeast of the dwelling.

- 5.14 The aerial photograph below (December 1999) shows that there have been changes in the appearance of the dwelling.



- 5.15 There is evidence of the outbuildings to the rear of the dwelling and within the, now overgrown, curtilage to the northeast.
- 5.16 There remains a 'clearing' in the centre.
- 5.17 John Inchley lived at the property with his wife (a beekeeper) and, following his death, his wife was unable to manage the whole of the property.
- 5.16 This aligns with the fact that the 1999 aerial photograph shows that, save for the 'clearing' in the middle, the majority of the property had been left to 'self seed'.
- 5.17 The applicant has confirmed that;

The people we bought the house off were Bee keepers and there were lots of old Bee hives around the place when we got it. There used to be a big breeze block built building behind the house which is where all the honey was processed.

When we got the house all the grounds were various separate garden areas all planted with different plants to help the Bees, there were various vegetable patches, barns and sheds but being 20 somethings and havening a 1 year old we had no idea what to do with it all so bull dozed the lot and opened everything up.

- 5.18 It is evident that the applicant had changed the curtilage, however as Appeal Inspectors confirm; 'curtilage can change'

- 5.19 In the July 2000 aerial photograph below, it can be seen that the applicant has started to clear some of the overgrown area.
- 5.20 There is also a new summerhouse (white roof), three (blue roof) shipping containers and swimming/paddling pools.



- 5.21 As confirmed by the applicant, the bee hives had all been removed, along with other outbuildings associated with bee keeping.
- 5.22 The access road is no longer visible, again supporting the fact that the use and extent of curtilage has changed over time.
- 5.23 There is now a detached brick built outbuilding (garage) to the south west of the dwelling, constructed by the applicant.
- 5.24 All of these changes have all occurred within the curtilage of the dwellinghouse.
- 5.25 Further proof that the curtilage of the dwellinghouse has changed over time, increasing in size from the 1999 aerial photograph, but remaining less than the Inchley photograph.

5.26 The next aerial photograph, with noticeable changes, is the September 2011 image;



- 5.27 Whilst the changes are not significant it can be seen that the blue roof containers have been removed and the area of land, previously cleared, is now showing signs of becoming overgrown.
- 5.28 The summerhouse remains and there is a clear line between what garden area is mown and tendered, the southwest side, compared to the more overgrown, northeast, area of the property.
- 5.29 It is becoming clear that, again, the curtilage is changing. It has become a smaller area than that which existed in the July 2000 photograph.

5.30 The next available image is that taken in April 2015;



- 5.31 By now, the overhead power lines (running northwest to southeast) have been removed and the substation, located fronting Station Road, has been constructed.
- 5.32 The summerhouse remains and there is a distinct, but partial, 'hedge line', giving a clear delineation of what could be considered curtilage.
- 5.33 However, the hedge line is not continuous, stopping short at the point of the summerhouse.
- 5.34 This break ensured that access between the two areas was available for the occupants and it did not form the total enclosure of the land.

5.35 The next available image is that taken in April 2016;



- 5.36 It is evident that there have been several changes in the preceding 12 months.
- 5.37 The overgrown area to the northeast of the hedge line has been cleared, with trees fronting Station Road retained.
- 5.38 The summerhouse remains at the end of the hedge line and the break in enclosure becomes more obvious.
- 5.39 The curtilage has again changed.
- 5.40 However, there is no physical barrier to the occupants using the whole of the property for purposes ancillary to the dwellinghouse.

5.41 The next available image is that taken in April 2018;



5.42 Again, changes can be seen.

5.43 The land, previously cleared, is now less maintained than the land immediately to the rear of the dwelling.

5.44 The summerhouse remains, as does the hedge line, however it now appears that the break in the hedge has become overgrown.

5.45 There is a clear argument that the land to the northeast is no longer within the curtilage of the dwellinghouse.

5.46 However, it is apparent that the curtilage has changed.

5.46 The next available image is that taken in April 2020;



5.47 At this point in time the construction of the extension to the dwelling can be seen under construction.

5.48 The summer house remains, along with a smaller central section of the hedge line.

5.49 There is no longer a break in the hedge to the northwest and the section, adjacent to the extension has been removed.

5.50 The upper section of the northeast area is now mowed and has become curtilage.

5.51 The lower section remains more overgrown, however it is evident that areas are being used as materials storage for the extension.

5.51 Again, showing that the curtilage has changed.

5.52 The next available image is that taken in June 2021;



5.53 The side extension has now been completed.

5.54 The summerhouse remains

5.55 The hedge line, previously forming a physical demarcation, has been reduced to a small section, with supplementary planting in front.

5.56 The northwest zone is now well maintained.

5.57 The southeast zone is less maintained than the northwest.

5.58 Whilst the curtilage is similar to that found in 2020, there are changes.

- 5.59 Whilst there is an image dated February 2022, it is blurred, therefore the next available image is that taken in May 2023;



- 5.60 This shows the completed outbuilding to the southwest, for which the LPA issued a Lawful Development Certificate (21/01144/CLP) issued May 2022.
- 5.61 The summerhouse remains, along with the now isolated hedge and planting.
- 5.62 The house has been extended and there is no longer any barrier or enclosure between the house and the zone to the northeast.
- 5.63 What is traditionally associated with 'garden' has now become a far larger area.
- 5.64 There is a distinct 'line' between garden zones, however this ties in with works carried out by the applicant to clear out the boundary ditches. Access was provided from the point on Station Road (further along from the traditional house entry) as can be seen by the 'track marks' across the garden to the northeast boundary.
- 5.65 The curtilage has changed.

5.66 The next available image is that taken in May 2025;



5.67 The summerhouse has now been removed.

5.68 There is no longer any form of hedge line or enclosure of the garden.

5.69 Isolated trees remain towards the southwest corner, the northeast boundary has mature trees and the trees on the boundary to Station Road remain.

5.70 The whole of the area is now maintained as garden, for purposes ancillary to the enjoyment of the dwellinghouse.

5.71 Curtilage has again changed.

5 CONCLUSION

- 5.01 Appeal decisions confirm that curtilage can change over time.
- 5.02 The curtilage shown in the Inchley aerial photograph was extensive and included uses specific to those allowed under Class E;

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.*

(authors emphasis)

- 5.03 It is evident that at the time of the Inchley photograph, the whole of the property was used as domestic curtilage.
- 5.04 Through a combination of OS mapping and aerial photographs it is apparent that the size, shape and form of the domestic curtilage has changed over time.
- 5.05 This application is for a Lawful Development Certificate for a detached swimming pool.
- 5.06 The GPDO states;

Permitted development

*E. The provision within the curtilage of the dwellinghouse of—
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure*

- 5.07 The proposed building, located wholly within the curtilage of the dwellinghouse, is permitted development.