

Our Ref: LF/ms/24-158_LB

2 December 2025

Development Management
Gravesham Borough Council
Civic Centre
Windmill Street
Gravesend
Kent
DA12 1AU

Via email: planning.admin@gravesham.gov.uk

Dear Sir/Madam

Application of Certificate of Lawful Proposed Use or Development at The Coach House, West Down Farm, Shipley Hills Road, Meopham, Gravesend, Kent, DA13 0JP.

On behalf of our client, Mr and Mrs Ripley ("the applicant"), we are pleased to enclose an application seeking confirmation that the above property is not a curtilage listed dwelling.

Mr Shazad Ghani has advised that this application form is the one to use to make this submission.

In addition to this covering letter, the following documents are enclosed in support of this application:

- Application Form
- 1783/1A (Existing Floor Plan & Location Plan)
- Assessment of Significance for The Coach House, West Down Farm.

Site Context

The dwelling is a detached, single storey house in the shape of a horseshoe at the back of West Down Farm. The farm gains access to the north off Shipley Hills Road. The site is not within a Conservation Area, National Landscape, National Park or World Heritage Site.

Proposed Development

A lawful development certificate has been issued for works to the dwelling pursuant to application reference: 20250340. This submission does not seek confirmation as to whether those works require listed building consent or not, but to determine whether

the building is curtilage listed based on detailed and up to date evidence. **Listed Building Matters**

In considering Appeal Reference: APP/K2230/D/23/3322987 the Inspector correctly identified that West Down Farmhouse was listed before the law relating to curtilages first came into effect on 1 January 1969. Historic England Advice Note 10 advises that there are three key factors to be taken into account in assessing whether a structure or object is within the curtilage of a listed building. These are:

- The physical layout of the listed building and the structure,
- Their ownership, both historically and at the date of listing; and
- The use or function of the relevant buildings, both historically and at the date of listing.

From the evidence in front of the Inspector, he concluded that The Coach House was related to West Down Farmhouse at the time the farmhouse was listed in 1966, and that there was no material change between 1966 and permission being sought for the use of the appeal building as a separate dwelling after 1972. He also considered the physical layout, use and function of The Coach House was connected to the Farmhouse at the time of the listing.

This finding is unfortunate and is based on a lack of information and evidence associated with the history of the buildings. The supporting Assessment of Significance demonstrates that the lack of a listed building consent for the conversion of the property in 1972 was the correct approach, as it is clear that The Coach House is not curtilage listed.

Legislative Background and Case Law

Section 1(5) of the LBCA 1990 states (emphasis added):

"In this Act "listed building" means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act–

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before July 1, 1948, shall, subject to subsection (5A)(a), be treated as part of the building."

Section 1(5A)(a) provides that in a list compiled or approved under this section, an entry for a building situated in England may provide "*(a) that an object or structure mentioned in subsection (5)(a) or (b) is not to be treated as part of the building for the purposes of this Act.*" There is, at present, no such provision in the list entry in this case.

Lord Carnwath JSC described the second part of subsection (5) of *Dill v Secretary of State for Housing, Communities and Local Government* [2020], "*and for the purposes of ...*" as the 'extended definition'.

The word “building” is not separately defined in the LBCA 1990. By s.91(2); except where the context requires, it has the same meaning as in s.336 TCPA 1990 which provides: “‘Building’ includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.” Lord Carnwath JSC went on to describe that under the legislative framework for listed building control:

“35. Protection is given to “buildings” as defined. For this purpose, as already noted, the statute adopts the ordinary planning definition of “building” as including a “structure or erection”. The one significant variation comes in the extended definition, that is the provision that certain “objects or structures” are to be “treated” as part of the building, if they are either “fixed to the building” or “within the curtilage of the building” and “form[ing] part of the land ...” (subject, since 1986, to an exception for those placed since July 1948). It is important to note that the extended definition does not result in the item in question becoming a listed building in its own right; it merely results in its being treated as part of the building to which it is attached, or in whose curtilage it stands. That is to be distinguished from the circumstances in which a garden object or structure may qualify for listing as a building in its own right.”

“54. It is also important to keep in mind the purpose of listed building control, which is to identify and protect buildings of special architectural or historic interest. It is not enough that an object may be of special artistic or historic interest in itself; the special interest must be linked to its status as a building. That is implicit in the reference to “architectural” interest. But it is relevant in my view also to the concept of historic interest. The historic interest must be found not merely in the object as such, but in its “erection” in a particular place.”

Since the curtilage of a building may be small or may be quite extensive, it is clear that “listed building”, as defined in the LBCA 1990, does not simply refer to an actual physical building that happens to be of special interest and has been recognised as such. It is, rather, a legal concept, and may extend so as to encompass a whole range of objects and structures, of which some may themselves be buildings.

In *R (Hampshire C.C.) v Blackbushe Airport Ltd* [2021] EWCA Civ 398, the Court of Appeal considered the meaning of “curtilage” in the context of the Commons Act 2006 and indicated that there was no difference when applied in the listed building context – in effect, there was a singular concept of ‘curtilage’ (emphasis added):

*“116. The conclusion to be drawn from the authorities is that they all illustrate different applications of the same test to the facts and circumstances of the specific cases. They demonstrate that the curtilage in a given case is a question of fact and degree. There is nothing in them which supports the test put forward by BAL; on the contrary, the approach of Buckley LJ in *Methuen-Campbell* has been adopted and followed in all the different statutory contexts in which the concept of “curtilage” has been considered, albeit perhaps with a slightly greater degree of latitude by the Court of Appeal in *Calderdale*. *Dyer*, *Barwick* and *Methuen-Campbell* itself would have been decided very differently if the test had been whether the land and building together formed part of some wider residential or industrial unit, or that there was “functional interdependence”*

between them, or (in the case of Dyer, at least) that one was necessary for the operation of the other. [...]

124. Holgate J was right to hold that the phrase “the curtilage of a building” in the 2006 Act requires the land in question to form part and parcel of the building to which it is related. The correct question is whether the land falls within the curtilage of the building, and not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, nor whether the building forms part and parcel of some unit which includes that land. He therefore correctly concluded that the Inspector’s decision was fatally flawed by material errors of law.”

The Coach House

West Down Farmhouse was listed in 1966. In relation to pre-1969 listings, the provision that is now s.1(5) LBCA 1990 was only enacted in the Town and Country Planning Act 1968, ss.40(3), 54. Although there does not appear to be definitive authority on the point, leading textbooks suggest that the position is that for purposes of establishing what is the extent of the listed building, the position must be examined as it was at the date of listing (or, as it was on 1 January 1969 in relation to buildings listed before then)

The legal position as to what falls within the curtilage of a building, or what is curtilage listed, as I am sure we can agree, is by no means simple. The curtilage of the principal building must be identified, which will be “quintessentially a matter of fact”: *James* (1991) P. & C.R. 234. Relevant matters will be the physical layout of the principal building and other buildings that might or might not be within its curtilage; their ownership, past and present; and their function, past and present. Not all the land in the same ownership as the principal building will necessarily be included, and some land in separate ownership may be included (*Attorney General ex rel Sutcliffe v Calderdale MBC* (1983) 46 P. & C.R. 399, *R (Hammerton) v London Underground Ltd* [2003] J.P.L. 984). Any pre-1948 structure that was in the curtilage of a principal building at the date of listing (or possibly 1 January 1969, if later) will be included in the listing, provided that it is a fixture, and is ancillary to the principal building except where expressly excluded.

We can then turn to the assessment criteria set out by the Inspector in appeal ref. 3322987. He was clear:

*“20. Case law, including the judgments of the Court of Appeal in *Skerrits*⁴ and the High Court in *Egerton*⁵ to which the main parties drew my attention, has established a number of tests to be taken into account in defining the extent of curtilage. These relate to the physical layout of the principal listed building and the building in question, their past and present ownership, and their past or present use and function, including specifically whether the building was ancillary – in other words, subordinate to and dependent on – the purposes of the principal listed building at the date of listing. These tests are also set out in Historic England Advice Note 10 Listed Buildings and Curtilage (“HEAN10”).”*

In this case the test is clear that it is not the date of listing but in fact 1 January 1969.

At this point the new evidence adduced following a full assessment of significance, evidence not available at the time of the appeal, demonstrates that the buildings did not remain in the same ownership until 1972, but in fact they split earlier and that both buildings were part of a wider estate holding and not necessarily ancillary to each other but ancillary to the Idle Farm Estate (later known as the Idle Farm Estate). The Coach House would not have been subordinate to or solely dependent on West Down Farmhouse and the farm workers who lived there but would have served the wider holding.

Sold in 1925 under three separate title documents, West Down Farmhouse, The Coach House and the access road were purchased by the Cologne family.

As set out in paragraphs 5-7 of the Assessment of Significance a number of planning applications were submitted in the mid -late 1960s by others, not the Cologne family, for the demolition of West Down Farmhouse and later alterations and extensions. It is likely that the property had changed hands in the mid-1960s, or was at least being sold at that time.

In 1972, Mr Cologne submitted the application for the part conversion of The Coach House. This demonstrates that the farmhouse and the Coach House were under different ownerships.

In 1975, the Brett family sold West Down Farmhouse, having acquired The Coach House following the passing of Mr and Mrs Cologne. It is worth highlighting that W Brett was the applicant in 1965, which reinforces that the Brett family owned West Down Farmhouse in 1965 and not the Cologne family. Further, it is likely that R J Mannion Esq, who submitted a planning application for West Down Farmhouse in 1970, was an agent rather than an applicant, in light of the reference to Mr Brett in both 1965 and 1975 and his stated address being a business property. This would follow the use of an agent by Mr Brett in 1965.

Based on the evidence presented, prior to West Down Farmhouse being listed and prior to the relevant date of 1 January 1969, the properties were in different ownerships. This position is reinforced by the lack of any listed building consent for the conversion of The Coach House in the early 70s.

Following the three tests set out by Historic England, the buildings were:

- Originally part of a wider estate and not interdependent on each other.
- Originally owned by a wider estate, before that estate was sold off in parts and West Down was bought by Mr Cologne.
- At the date of listing were in separate ownership.
- At the relevant date, 1 January 1969, in separate ownership.

It is a reasonable conclusion, and one clearly taken in the 1970s, that this is not a curtilage listed building.

Criticism has been advanced that all 600 records in the Kent Archives and all 1300 records in the National Archive Catalogue that mention Meopham have not been reviewed. Limitations are cited, as information could exist in archives or local museums that weren't explored at the time, and when researching any historic building further documentary evidence can always come to light in the future i.e. information (pictures, sales particulars, old documents) from local private sources, family members, former owners, something somebody finds in an old trunk etc. When researching historic buildings, it is near impossible to claim you have been able to categorically assess every last bit of documentation that could feasibly exist. Of the 600 records in the Kent Archives of Local History and the 1300 records in the National Archive Catalogue mentioning Meopham most, if not all, will not have anything to do with West Down Farm, although it can't be ruled out there could be some relevant information. That said, it would be disproportionate to go through all archive information mentioning Meopham to hopefully find something (relevant or not) that may reference West Down Farm.

What is evident is that the limited information, presented at the appeal by the Appellant's then agent and the Local Planning Authority to determine curtilage, was insufficient for a sound judgement to be made, as a much greater amount of information, as presented by ourselves, was available, such that it places that appeal decision on a very weak footing.

Summary

We have adequately demonstrated that the property is not a curtilage Listed Building and that whilst the Inspector's earlier decision was based on the evidence present at that time, it was narrow and limited. Consequently, the further evidence submitted with this application is detailed and provides a robust basis on which to conclude that the building is not curtilage listed, in accordance with the position taken by the Authority in the early 1970s.

If you have any queries in relation to the submitted material, please do not hesitate to contact me.

Yours faithfully



Liz Fitzgerald
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