

Hiley v Secretary of State for Levelling Up, Housing and Communities



No Substantial Judicial Treatment

Court

Queen's Bench Division (Administrative Court)

Judgment Date

27 May 2022

Where Reported

[2022] EWHC 1289 (Admin)

[2022] 5 WLUK 335

[Judgment](#)

Subject

Planning

Keywords

Certificates of lawful use or development; Curtilage; Permitted development; Planning inspectors; Precedent

Judge

[Julian Knowles J](#)

Counsel

For the appellant: Stephen Whale (Public Access).

For the first respondent: Nina Pindham.

For the second respondent: No appearance or representation.

Solicitor

For the first respondent: Government Legal Department.

Case Digest

Summary

A planning inspector had misdirected himself in finding that land proposed for development was not within the curtilage of an existing building so as to satisfy the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 Sch.2 Pt 7 para.H](#) and [para.J](#).

Abstract

The appellant appealed against the first respondent secretary of state's decision, by his planning inspector, to uphold the second respondent local authority's refusal to grant a certificate of lawfulness for a proposed development.

The appellant had sought a certificate of lawfulness for the proposed construction of a steel-clad workshop/storage building with associated hardstanding within an existing recreational vehicle servicing and remodelling facility on the basis that the development constituted permitted development under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 Sch.2 Pt 7 para.H](#) and [para.J](#). The local authority refused the application. The issue before the inspector was whether the proposed development satisfied [para.H.2.\(a\)](#) (requiring the development to be within the curtilage of an existing industrial building or warehouse) and [para.J.\(a\)](#) (requiring the development to consist of the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned). The inspector stated that a curtilage was "a feature constrained to a small area about a building" and that the appeal site had to be "part of the enclosure" with

the building. He found that a green field and pond predominately bounded by a hedge on which the development was proposed to be built was physically separate from the main industrial/warehouse use, and that the proposed development would not, therefore, be built on land comprising the curtilage of the industrial/warehouse buildings so as to meet the requirements of para.H and para.J.

The appellant contended that the inspector had erred in finding that the appeal land was not within the curtilage of the existing buildings.

Held

Appeal allowed.

Curtilage: legal principles - The concept of a building's "curtilage" had recently been considered by the Court of Appeal in *R. (on the application of Hampshire CC) v Blackbushe Airport Ltd* [2021] EWCA Civ 398, [2022] Q.B. 103, [2021] 3 WLUK 271, from which the following propositions could be distilled:

- it was not possible to give a comprehensive definition of "curtilage";
- the focus should be on the building whose curtilage was to be ascertained;
- the determination of the curtilage was a matter of fact and degree for the decision-maker taking into account the relevant considerations;
- there was no prescribed or exhaustive list of relevant factors;
- one needed to ask whether the land in question was so intimately associated with the building as to lead to the conclusion that the land formed part and parcel of the building;
- the physical layout of the building, its past and present ownership, and its past and present function were factors which might be applied, but they were not determinative and did not displace the "part and parcel" test;
- functional equivalence or functional interdependence was not relevant;
- the question whether the land and building together formed part of some residential or industrial or operational unit was irrelevant;
- the test was not whether the building and land fell within a single enclosure;
- land did not have to be "ancillary" to the building in order to fall within its curtilage, although whether it was ancillary was relevant and might be highly relevant;
- the curtilage of a building was a different concept from the "planning unit", *Blackbushe Airport* applied (see paras 17-20 of judgment).

Inspector's decision - The judgment in *Blackbushe Airport* had been handed down after the hearing before the inspector but before he issued his decision, and it was not drawn to his attention. The inspector's decision was at variance with some of the principles established in *Blackbushe Airport*, and was legally erroneous in light of that judgment. In particular, his findings that curtilage was a feature constrained to a small area about a building and that the considered land had to be part of the enclosure with the building were plainly wrong. The inspector had misdirected himself on a number of issues in a sufficiently serious way that his decision could not stand. It was therefore quashed and the matter was remitted to the secretary of state for a fresh decision (paras 21, 27-28, 38, 48-49).