

Re Hayes Park North Building

ADVICE

1 INTRODUCTION AND SUMMARY

- 1.1 I am instructed to advise as to whether the Hayes Park North Building [HPN building] “is within the curtilage of a listed building”.
- 1.2 The short answer is that it is clearly not within the curtilage of either of the listed buildings applying the law as set down recently by the Court of Appeal ***R. (on the application of Hampshire CC) v Blackbushe Airport Ltd*** [2021] EWCA 398.

2 THE QUESTION

- 2.1 Under Schedule 2 Part 3 Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 [“the GPDO”] a change of use is permitted from Class B1(a) to Class C is permitted. This is subject to various restrictions where that change is not permitted. One of those restrictions in O.1 is as follows.

Development is not permitted by Class O if –

...

- (f) *the building is a listed building or is within the curtilage of a building...*

- 2.2 The question in this advice is whether the HPN building is within the curtilage of the listed buildings to the south which are called Hayes Park Central and Hayes Park South.

3 THE BRIEF FACTS

- 3.1 The HPN building was constructed in around 2000 by Tishman Speyer pursuant to a planning permission granted in 1996 (ref. 12853/w/96/1667).
- 3.2 Since its construction, the building has been occupied by United Biscuits under a lease from 30th April 2001.
- 3.3 There has never been any connection between Heinz and United Biscuits. When United Biscuits moved into HPN, Hayes Park Central and South were occupied by Fujitsu Europe Ltd in Central and Heinz in the South.

4 ANALYSIS

- 4.1 The Court of appeal in ***Blackbushe***¹ has set out that what the test is for the curtilage. Andrews LJ held that it was the test articulated in ***Methuen-Campbell v Walters***. She said as follows:

The curtilage of a building is a single concept, and Mr Edwards is right that it does not have different meanings in different statutory contexts. There is in truth only one test, and that is the test articulated by Buckley LJ in Methuen-Campbell...

- 4.2 That test from ***Methuen-Campbell*** she records as follows:

¹ above

“the test articulated by Buckley LJ in Methuen-Campbell v Walters [1979] 2 QB 525 (“Methuen-Campbell”) namely, that the land must be:

“so intimately connected with [the building] as to lead to the conclusion that the former forms part and parcel of the latter.”

- 4.3 The judgment gives guidance as to how this “part and parcel” test is to be applied.

66.I do not accept Mr Edwards’ criticism that the “part and parcel” test is unworkable in practice and linguistically unsound. Of course it does not mean that the yard or garden is literally to be regarded as part of the physical structure of the building. The expression is figurative and means that a reference to that building would be understood to include, or extend to, that other land. In Caledonian Railway Co. v Turcan [1898] AC 256 Lord Halsbury, referring to 232 square yards of land within the curtilage of a warehouse which provided the means of access to it, said the curtilage was “just as much part of the house as if it were a separate room in the house.”

67.If the building is a dwelling-house, then in most cases a reference to the house without more would reasonably be understood to include its yard or garden, or a structure on the adjacent land such as a garage or garden shed. As My Lord, Nugee LJ, pointed out during the course of argument, it would not be linguistically inaccurate to say that somebody “came round to my house”, if in fact they only came to the garden or to a garage at the end of the driveway

- 4.4 Applying that to the facts of this case it is very apparent why the HPN building is not within the curtilage of the separately occupied Hayes Park Central and South buildings. If someone went round to visit either Fujitsu Europe Ltd in Central or Heinz in the South building they would obviously not be visiting HPN occupied by United Biscuits. They would be visiting an entirely different but neighbouring office building. This reveals that the two are separate buildings with separate curtilages. Going to the HPN building and visiting United Biscuits would be nothing like going to a room of the listed Fujitsu or Heinz buildings.

- 4.5 Thus, the HPN building is simply not “part and parcel” of the separate listed buildings to the south nor has it ever been since its construction.

- 4.6 I have been shown a short note from a conservation specialist of the Council which says correctly the building is not to be considered to be

curtilage listed but then seeks to suggest HPN is within the curtilage of the listed buildings. However this note should not be followed in this latter regard for amongst the following reasons.

- i) It does not consider the leading authority on the meaning of curtilage for all legislative regimes namely **Blackbushe** set out above.
- ii) **Blackbushe** makes it plain that the test for curtilage is no different for the listed building case than generally and so this question is really not a conservation question but one of law and fact that is within the judgment of a planner. LJ Andrews said as follows.

110. In any event, for the reasons already stated, I do not accept that the test in a listed building case is any different....

- iii) The phrase in the GPDO clearly says that for the change of use not to be allowed the “building .. is² within the curtilage of the listed building”. That is in the present tense and the conservation officer seems to be wrongly exclusively focusing on the past position not the present.
- iv) The phrase also focuses on the building ie the HPN building and whether that is within the curtilage of the listed building. The approach of the conservation office to go back to a time before that building does not assist as to whether the HPN building is within the curtilage. Ever since that has been built it is separate and not within the curtilage of the listed buildings.

² My emphasis

5 CONCLUSION

- 5.1 For all these reasons my clear opinion based on the law as set out by the Court of Appeal is that the HPN building is not within the curtilage of the separate listed buildings.

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