



Appeal Decision

Site visit made on 23 September 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th November 2025

Appeal Ref: APP/F9498/X/23/3327061

Hall Farm, Brendon, Lyton EX35 6PS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs K Wall against the decision of Exmoor National Park Authority.
 - The application ref 62/11/23/007, dated 1 May 2023, was refused by notice dated 11 July 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is the erection of a fence and gate on land at Hall Farm, Brendon as marked on accompanying plan KW1.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the erection of a fence and gate on land at Hall Farm, which is found to be lawful.

Preliminary Matters

2. I have referred to the address provided in the National Park Authority's Decision Notice. Although this address differs from the one given in the Application Form, it aligns with the address stated on the Appeal Form submitted by the appellant. Therefore, I am confident that there will be no prejudice in this matter.
3. The Lawful Development Certificate (LDC) application included several documents: an Application Form, a Location Plan, a layout plan (drawing reference KW1), and a supporting statement. In addition to these, the appeal submissions featured a plan labelled 'Large Location' and a 'Heritage Statement.' The additional information was submitted alongside the initial appeal, and the National Park Authority had the opportunity to respond to this information when preparing their Statement of Case. Consequently, I can consider the additional information when making my decision without causing any prejudice to the National Park Authority's position.
4. It is important to note that plan reference KW1, attached to the application and stated in the description of the development, illustrates the location and route of the fences and gates between points A and D. The plan also depicts a key indicating the farmhouse and shippin in green. The appellant initially took the approach by stating that the bank barn and Linhay's barn in orange are curtilage listed. However, their perspective on this matter has changed, and the heritage statement does not confirm if these buildings are curtilage listed. Therefore, for the purposes of this appeal, I will disregard the key provided with the plan and focus solely on the plan to ascertain the position and route of the gates and fence set out between points A and D.

Background and Main Issue

5. In an application for an LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the development would be lawful. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: (i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (ii) They do not constitute a contravention of any enforcement notice then in force.
6. I have not been informed of any enforcement notices affecting the land in question. Therefore, the key issue revolves around whether the proposed fence and gate would benefit from permitted development rights under Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the Order). The National Park Authority found that the fence and gate satisfied all conditions and limitations, except for the stipulation in (d). To clarify, Article 3, Schedule 2, Part 2, Class A (d) of the Order specifies that development is not permitted if it occurs within the curtilage of, or affects a gate, fence, wall, or other means of enclosure surrounding a listed building.
7. It is crucial to note that the listing of a building encompasses any object or structure attached to it, as well as any free-standing structure erected before 1 July 1948 within the curtilage of the listed building, in accordance with section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This holds true regardless of whether such objects have been explicitly identified in the list description. While only a 'building' may be officially listed, the term 'building' is broadly defined under section 336(1) of the 1990 Act. According to section 336(1), a building includes 'any structure or erection, and any part of a building as so defined, but excludes plant or machinery that is part of that building.'
8. The main issue is whether the National Park Authority's decision was well-founded in relation to whether the fence and gate is within the curtilage of the listed building, as set out in Article 3 and Schedule 2, Part 2, Class A(d) of the Order.

Reasons

9. Hall Farm, which encompasses a farmhouse and adjoining shippon, is a Grade II listed property located within Exmoor National Park. The site features three traditional stone agricultural buildings, a larger modern portal frame building, and a ménage. The history of Hall Farm presented with the application dates back to at least 1809. The farmhouse was listed as a Grade II structure in November 1988.
10. The appellant outlines in the Supporting Statement that there is no statutory definition of 'curtilage' but includes definitions from the Oxford English Dictionary as well as interpretations from caselaw judgements¹. Although it is agreed that there is no definition of 'curtilage' within the Town and Country Planning Act 1990 (1990 Act), the caselaw referred to indicates that curtilage is constrained to a small area about a building, and land being associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter.
11. The Ministry of Housing, Communities and Local Government (MHCLG) Technical Guidance for Householder Development provides some assistance in respect of

¹ Dyer v Dorset County Council 1988; Hon. David McAlpine v SOS & Another [1994]

the term, and defines curtilage in line with these interpretations. The definition, on page 7 of MHCLG Technical Guidance, states:

“Curtilage” is land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.

12. There is also caselaw that has had regard to the issue of curtilage, some of which has been highlighted by the appellant and the National Park Authority. For instance, *Sinclair-Lockhart's Trustees*² established that land may be regarded as being within the curtilage of a building if it serves the purpose of the house or building in some necessary or reasonably useful way. *Debenhams*³ determined that under the Rating legislation, the "listing" of a building for its special architectural or historic interest, only applies to structures that are ancillary to the listed building. It does not extend to entirely distinct buildings that are merely physically connected to the listed one.
13. *Calderdale*⁴ sets out three important factors that must be considered and are important to my consideration of the curtilage of the listed building. These include (i) the physical layout of the building, land and structure in question; (ii) their ownership, past and present; and (iii) their function, past and present. The factors set out are relevant considerations, but they are not determinative on their own.

Physical Layout of the Building and Land

14. As of my visit, the listed farmhouse sits centrally, with an agricultural yard to the east, accessed via a track situated to the north. The agricultural yard to the west includes the Bank Barn, a modern 'Atcost' shed alongside the Linhays' barn. A well-defined private garden is situated immediately to the south of the listed farmhouse, bordered by a stone wall, with gates leading to an expansive garden area that includes a large pond to the south. The western boundary includes the stone wall, a gated access to the original southern access and the rear wall of the threshing barn. The rear elevation of the threshing barn is close to the side elevation of the listed farmhouse, and a door in the rear provides access from the side of the enclosed private garden into the threshing barn.
15. From the evidence before me, the physical layout of the land around the listed farmhouse has not undergone significant changes throughout its history. In 1889, the original vehicle access was realigned from the south to the north of the listed farmhouse. This alteration marked one of the few significant changes to the layout until 1968, when the threshing barn and the land to the west underwent some minor changes. This included ground levels to the land to the west being raised and minor changes to the threshing barn to accommodate some agricultural activities.
16. By the late 1960s, an aerial photograph and the 1978 OS Map⁵ confirm that the physical layout of the land around the listed farmhouse were largely consistent with the layout I viewed on site. The land to the west of the threshing barn was also enclosed by this time, forming a boundary with the vehicle highway.

² *Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR 195

³ *Debenhams Plc v Westminster CC* [1987] AC 396; [1987] JPL 344

⁴ *Attorney General, ex r Sutcliffe v Calderdale Borough Council* (1983) 46 P&CR 399

⁵ Figures 14 and 15- Heritage statement

Ownership

17. The submissions indicate that the appellant purchased Hall Farm in 2017, and all of the nearby agricultural buildings as well as the land enclosed to the west were included. I have no reason to doubt that the plan with the LDC, which identifies the area of land that has been owned and occupied by the appellants since 2017, is incorrect.
18. The farm holding has gone through elements of change in terms of land ownership, as well as the relative size of the farm holding, as part of its past. However, there is nothing to indicate that, past or present, the land to the west of the listed farmhouse, where the gates and fences have been erected, was under different ownership as Hall Farm and the listed farmhouse.

Use and Function

19. As observed during my visit, the listed farmhouse, the immediate area to the south enclosed by a stone wall, as well as the land with a pond beyond, were in use for residential purposes. The threshing barn could be accessed via a door in its rear elevation from the private garden. The threshing barn was largely empty but divided into two internal areas. The chickens and rhea could utilise the southern end of the barn and had direct access to the enclosed land to the west, which was dedicated to the agricultural use. However, the animals were unable to access the private garden of the farmhouse. The wall and gates forming the west boundary of the garden emphasised the separation of functions—residential for the farmhouse and garden, and agricultural for the threshing barn and adjoining land to the west enclosed by the gates and fence.
20. Based on the evidence presented with the appeal, the use and function of the listed farmhouse at Hall Farm, past and present, appear to be distinctly separate from that of the threshing barn and the land to the west. Although both serving the owner of Hall Farm, the farmhouse served a clear residential purpose, providing living accommodation, while the garden area enclosed by a stone wall to the south functioned as an incidental residential garden. In contrast, the threshing barn and the land to the west were separated and dedicated to agricultural activities. The barn was originally constructed for the purpose of threshing grain and has maintained its agricultural function over the years. Following minor modifications this area continued to be used for various agricultural purposes, such as loose housing for cattle, and later for sheep, and presently chickens, and rhea.
21. Based on the evidence submitted with the appeal, this separate use and function have been maintained throughout its past and present, reflecting both the historical context and current utilisation of the property and land.

Summary on Curtilage

22. In light of the legal principles established in the *Calderdale* case and the relevant case law cited, it is important to consider several factors regarding the threshing barn and the land to the west of the listed farmhouse. While these elements are physically proximate to the dwelling, have historically remained under common ownership, and are accessible through the residential garden, these aspects alone are not sufficient to establish them as part of the listed farmhouse's curtilage.

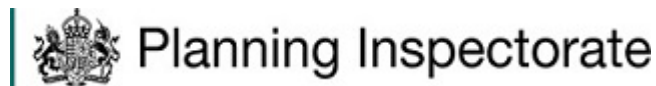
23. The determination of curtilage hinges significantly on the use and functional relationship of the enclosed area to the main dwelling. The courts in *Calderdale* highlighted that curtilage considerations go beyond mere proximity or ownership; they require an examination of whether the land or structure is intimately associated with the dwelling for domestic purposes.
24. Although the threshing barn and the adjacent land are close, and been part of the same ownership, they have been utilised for agricultural purposes and have not historically or currently served any domestic function related to the farmhouse. The separation of these areas is further reinforced by a historical boundary wall, which distinctly delineates the agricultural land from the immediate and incidental residential area surrounding the listed farmhouse. As such, I have given weight to the established agricultural use of both the threshing barn and the land to the west, past and present, alongside the layout that clearly defines intimate boundaries around the farmhouse, which have served its residential use and function.
25. Accordingly, based on the evidence presented, the fence and gates erected between points A and D, as shown on the accompanying plan reference KW1, have not been positioned within the curtilage of the listed building. As such, the development is permitted by Article 3, Schedule 2, Part 2, Class A (d) of the Order.

Conclusion

26. For the reasons given above, I conclude, on the evidence now available, that the National Park Authority's refusal to grant a certificate of lawful use or development for the erection of a fence and gate on land at Hall Farm is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 May 2023, the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Based on the evidence provided, the fence and gate erected between points A-D on the attached plan, KW1, would have benefitted from deemed planning permission pursuant by Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

M. P. Howell

Inspector

Date: **28th November 2025**

Reference: APP/F9498/X/23/3327061

First Schedule

The erection of a fence and gate on land at Hall Farm, Brendon, as marked on the accompanying plan KW1.

Second Schedule

Hall Farm, Brendon, Lyton EX35 6PS

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 28th November 2025

by **M. P. Howell**

Land at: Hall Farm, LYNTON, EX35 6PS

Reference: APP/F9498/X/23/3327061

Scale: Not to Scale

