
Appeal Decisions

Site visit made on 10 March 2025

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 28 November 2025

Appeal Refs: APP/V2635/C/23/3324860 (Appeal A) & APP/V2635/C/23/3324861 (Appeal B)

4 Harvestile Lane, Pentney, King's Lynn, Norfolk

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act"). The appeals are made by Miss Hannah Willson (Appeal A) & Mr Charles De Bootman (Appeal B) against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is "without planning permission, the material change of use of the Land from agricultural to use for residential (garden) purposes, and associated operational development".
 - The requirements of the notice are to:
 1. Cease the use of the land as a garden.
 2. Remove all associated paraphernalia, including paving and structures, from the land.
 3. Return the land to its former condition.
 - The period for compliance with the requirements is: three calendar months from the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c) and (d) of the Act.
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Summary Decisions

1. The appeals are allowed following correction of the enforcement notice in the terms set out in the Formal Decisions.

Applications for costs

2. An application for costs was made by the appellants against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate decision.

Matters concerning the notice

3. The Council has explained that the plan attached to the enforcement notice (the "Original Plan") includes land which it considers to be 'lawful residential curtilage'. A revised plan (the "Revised Plan") has been provided by the Council which excludes these areas. I sought the comments of the appellants in this regard. The area of land shown within the Revised Plan is more limited in size and no additional land, outside of that shown within the Original Plan, has been included. Since the Revised Plan is for a lesser area of land, I consider that no

injustice would be caused to any party if I delete the Original Plan and substitute the Revised Plan.

4. I shall therefore correct the notice by deleting drawing '*A Plan showing site at: 4 Harvestile Lane, Pentney King's Lynn, date: 15 May 2023*' and replace it with drawing '*A Plan showing Site at: 4 Harvestile Lane, Pentney, King's Lynn, date: 1st April 2025*'.
5. I shall also make a corresponding correction to section 2 of the notice to properly reflect that the area on the Revised Plan is shown to be edged in red and hatched in purple.

Ground (c)

6. An appeal under ground (c) is made on the basis that those matters stated in the notice (if they occurred) do not constitute a breach of planning control. In a ground (c) appeal, the onus of proof is on the appellants to show, on the balance of probabilities, that there has not been a breach of planning control.
7. It is the Council's case that the appeal land is agricultural land and that a material change of use to a residential use has occurred and for which planning permission is required.
8. The meaning of development is set out in section 55(1) of the Act and includes the making of any material change in the use of any buildings or other land. 'Land' is defined in section 336(1) of the Act as 'any corporeal hereditament, including a building ...'. Section 55(2) makes exemptions to the definition, providing that particular operations or uses shall not be taken for the purposes of the Act as involving development and therefore do not require any grant of planning permission. One such exception at section 55(2)(d) states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse is not development.
9. The main thrust of the appellants' case is that, by reason of section 55(2)(d), the use of land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse is exempt from 'development'. Therefore, in order for the appeal under ground (c) to be successful, it must be established that, at the date of the enforcement notice being issued, the appeal land was within the curtilage of the dwellinghouse, and it was being used for any purpose incidental to the enjoyment of the dwellinghouse.
10. Curtilage defines an area of land in relation to a building and not a use of land. The term 'curtilage' is not defined within the Act. The Council has drawn my attention to appeal decision APP/V2635/C/18/3202136, where the Inspector considered 'curtilage' to have its ordinary meaning of 'a small court, yard, or piece of ground attached to a dwellinghouse, and forming one enclosure with it', and that it is enough that the land serves the purpose of a dwelling in some reasonably necessary or useful manner. While I note the approach taken by the Inspector in that appeal, the decision was issued in July 2019. The appellant has drawn my attention to subsequent case law which has considered the approach to be taken when considering curtilage.

11. The Courts have addressed the meaning of 'curtilage'. It is usually the area of land within which the house sits, or to which it is attached, such as a garden, although for some houses, especially those properties which include larger grounds, it may be a smaller area. Generally, to fall within the curtilage of a building, it is enough that the land serves the purpose of the house or building in some necessary or reasonably useful way, even though it has not been marked off in any way¹.
12. The land must be intimately associated with the building in order to support a conclusion that it forms part and parcel of that building². It does not need to form a single enclosure. However, other considerations, such as a) physical layout; b) past and present ownership; c) use or function past or present, are factors that might be applied, however, they are not determinative and they do not displace the "part and parcel" test³. These have become known as the "*Stephenson factors*".
13. The case of *Hiley*⁴ cited *Challenge Fencing*⁵ which reiterated propositions from relevant authorities on "curtilage" and which have been summarised as:-
 - i) *The extent of the curtilage of a building is a question of fact and degree, and a matter for the decision-maker, subject to normal principles of public law;*
 - ii) *The three 'Stephenson' factors (layout, ownership past and present and the use or function of the land or buildings, past and present)*
 - 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, but it is not a legal requirement that the claimed curtilage should be ancillary;*
 - v) *The degree to which the building and the claimed curtilage fall within one enclosure is relevant, and this will be one aspect of the physical layout, being the first of the Calderdale factors⁶.*
 - 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.*
14. Having regard to the authorities, it is apparent that the determination of curtilage is a matter of fact and degree for the decision-maker taking into account the relevant considerations.

¹ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195

² *Methuen-Campbell v Walters* [1979] 1QB 525

³ *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

⁴ *Hiley v ELDC* [2022] EWHC 1289

⁵ *Challenge Fencing Ltd v SSHCLG & Elmbridge BC* [2019] EWHC 553 (Admin)

⁶ *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

15. Each appellant has submitted a statutory declaration with the appeal. Their declarations are sworn and set out that the appeal dwelling and the appeal land have been in the ownership of the appellants since the 3 August 2012. The evidence before me indicates that the appeal land was previously part of a wider parcel of land in agricultural use albeit the appeal land comprised scrubland, as shown in the appellants submitted undated photograph, and thus it was unfarmable.
16. No 4 Harvestile Lane is a two-storey semi-detached dwelling positioned at the end of Harvestile Lane. The appeal land is mainly positioned to the side of the dwellinghouse and its original garden areas. To the rear of the dwelling is a single storey rear extension which includes a number of full height glazed doors within the side elevation that face towards the appeal land and which open out on to a generous area of raised patio which is for the most part positioned within the appeal land.
17. The property is orientated to face the parking forecourt and turning areas and it includes areas of garden to the front and rear of the property which are both of limited size. These garden areas comprise closely mown areas of lawn together with areas of hardstanding, garden structures, furniture and domestic paraphernalia such as waste receptacles and washing line, which possess a very domestic arrangement. For the most part, these areas of original garden are enclosed by a boundary treatment consisting of fencing of modest height which provide well-defined boundaries to the other activity that takes place within neighbouring properties, their gardens and within the communal parking forecourt and turning area. Consequently, these areas of original garden have an intimate association with the dwelling.
18. The appeal site is a sizeable area of land which is divided into two parts. The larger part is mostly comprised of mown lawn (the “larger part”), whereas the smaller part predominantly consists of a loose gravel surface (the “smaller part”). Due to a continuation of the front boundary fence across the appeal land this serves to separate a smaller area (the “smaller part”) from the larger part. Whilst this dividing fence appears to be a more recent addition to the appeal land and does not appear to be present within any of the appellants’ photographs, the fence is in existence within the Council’s photographs at the time of their visit in March 2023. The smaller part projects outwards beyond the original boundary of the front garden of the appeal property and is therefore adjacent to part of the communal parking forecourt and turning area. A wide gated opening, which is of sufficient width to allow a vehicle to pass through, provides access from the parking forecourt and turning area to the smaller part of the appeal land.
19. For the most part, this smaller area of the appeal land is surfaced in loose gravel and a photograph taken by the Council (dated 13 March 2023) and appellants’ photograph dated 20 August 2020 point to it being used, in part, for the parking of vehicles. To the opposite side from the vehicular opening I noted a raised planter, a sizeable pile of chopped logs, a composting bin, wheelbarrow and gardening tools. The appellants’ photograph dated 24 April 2020 shows the raised planter in situ whilst children are watering plants within it. Similarly, the

planter and compost bin can be made out on the image during the Council's visit to the property in March 2023.

20. Notwithstanding the division between the larger and smaller parts of the appeal land, the fencing dividing the appeal land is low height and a gate inserted within this fencing enables access between the two parts such that the two areas appear to have a close relationship with each other. The appeal land is contained by an established boundary hedge planted along its north, east and west boundaries which was neatly trimmed at the time of my visit and appears well-maintained in the Council's photographs taken in March 2023. The hedge boundary serves to enclose the appeal land thus separating it from the adjacent agricultural land and, notwithstanding some internal delineation within the appeal land, overall I find the appeal land forms one enclosure with the dwellinghouse.
21. No. 4 Harvestile Lane was approved as part of a small residential development under planning reference 2/02/1693/F. The Council has submitted a number of aerial images which it says are taken in 2006 and 2013 and show the property had implemented its 'approved curtilage' as defined in planning permission 2/02/1693/F and shown in the submitted plan. In both the 2006 and the 2013 photographs submitted by the Council, what appears to be boundary fencing extends around the rear garden of the appeal property, separating it from the agricultural land to the north (which now forms part of the appeal site).
22. The appellants' have provided me with a photograph dated 18 May 2013 wherein a timber and wire fence can be seen adjacent to the front of the appeal dwelling and which appears to roughly correspond with the position of the 'approved curtilage' suggested by the Council. I also note that as part of an application for Notification for Prior Approval for a Proposed Larger Home Extension, reference 15/01539/PAGPD, dated 28 September 2015, the appellant submitted a plan which identifies the appeal site as "field/allotments".
23. However, it was accepted in the case of *O'Flynn*⁷ that it is possible for the extent of curtilage to change over time. I observed there to be no physical separation between the larger part of the appeal land and the original front and rear garden areas of the appeal dwelling and as a result the larger part of the appeal land is continuous with the original front and rear garden areas. From the evidence provided, it appears that this has been the case for a number of years.
24. The appellants' statutory declarations set out the history of the site and their acquisition of it, including the works and activities they undertook to level and grade the land. The appellants state that they purchased No 4 Harvestile Lane in August 2012 and purchased the appeal site at the same time. Prior to 2012, the dwelling and appeal site were in the ownership of Mr De Bootman's father.
25. Photographs dated 19 March 2012, 6 April 2012, 15 May 2013 and 18 May 2013 show works being undertaken to clear the appeal land of scrub, level, grade and plant the site with grass seed. Images of invoices dated 4 April 2013 and 19 April 2013 show machinery the appellants hired. An image of an invoice dated 10 August 2013 purports to relate to the purchase of a garden gate and

⁷ *O'Flynn v SSCLG & Warwick DC* [2016] EWHC 2984 (Admin)

associated parts. Whilst creating a garden is not in itself conclusive, these documents serve to show that the land has been laid out as a residential garden for a considerable period of time and the appellants have provided a number of photographs in support of their appeal which show the appeal land incorporated in this way. In a photograph from 29 March 2014, for example, the appeal site can be seen to be neatly mown with fencing along its edge. The Council's Google Pro Earth image dated 26 September 2019, shows there was no obvious delineation between the larger part of the appeal land and the dwellinghouse and original garden areas at that date.

26. Whilst the appellants state that their initial activities were largely related to gardening and landscaping, they suggest that, as their family grew, their activities changed. They describe carrying out tree planting, dog walking, playing games with their children, eating lunch and dinners with friends and family and socialising. The submitted photographs show the appellants using the appeal land for sitting out, socialising and outdoor dining with family/friends, playing in the children's playhouse and constructing the same. A photograph taken on the 20 May 2014, for example, shows the site being used for sitting out with various seating, picnic table, parasol and a barbeque being evident.
27. A number of neighbouring occupiers have provided their comments as part of the appeal. Whilst their comments are generalised and brief, they state, *'it's nice to see a garden area enjoyed by a family so much and cared for'* and *'I've lived here for 11 years. I've seen the owners at number 4 improve the site over this time. It is an attractive garden area with trees, flowers and the kids love playing on it'* and thus their comments provide some support as to the appellants' accounts of how the land has been used.
28. Whilst there is limited detailed information about the frequency and duration of the activities that are stated to have taken place, the appellants state that those activities have *'never subsided and continue to this day'* and the Council does not dispute that the appeal land has been used for these activities nor has it provided any evidence to contradict the appellants' version of how they have used the appeal land. The Council state *'ornamental trees have been planted and domestic paraphernalia, such as outbuildings, children's play equipment, and a washing line, sited within the appeal Land. As a result, it is clear a significant change in the character of activities on the appeal land has occurred'*.
29. During my visit, I observed the grass within the larger part was closely mown and there were a number of trees of limited height planted throughout this part of the appeal land. A single storey wooden outbuilding, a children's playhouse and a wooden garden shed were also present together with various items of garden furniture, children's play equipment and toys. Photographs taken by the Council during a visit to the property on the 13 March 2023 show that little had changed in terms of the layout of the land, its condition and the content of outbuildings in the intervening period between the images being taken and the date of my visit.
30. The appeal land does not appear appreciably different in character and appearance to the original areas of garden positioned to the front and rear of the dwelling. I find the appeal land has little resemblance to, and is in vast contrast to areas of farmland that are situated beyond the well-defined

boundaries of the appeal land. When viewed from the access road and parking areas to the front of the dwelling, the appeal land appears continuous with the original front garden area and is seen as a parcel of land predominantly containing lawn, a few trees and small-scale domestic outbuildings and structures which are readily associated with a residential use.

31. I conclude that, despite its size, it appears closely related both physically and visually to the dwelling. It has an intimate association to the dwellinghouse and areas of garden that adjoin it by reason of its proximity to that dwelling and original areas of garden, with which the appeal land is mostly continuous and together with the enclosure that is provided by the well-defined boundaries to other activity that may take place within the access road and parking areas and the neighbouring agricultural land.
32. Based upon what I have seen and the evidence before me, on the balance of probabilities, I consider that the appeal land is more likely than not to have been used for a purpose incidental to the enjoyment of the dwellinghouse and unlikely to have been used for any other purpose, as at the date of the notice. I find the appeal land has an intimate association with the dwellinghouse and as a matter of fact and degree, on the balance of probabilities, I find the appeal land can reasonably be regarded as forming part and parcel of the dwellinghouse and falls within its curtilage.
33. Although the enforcement notice refers to operational development, the allegation refers to 'associated operational development' and requires the recipient of the notice to 'remove all associated paraphernalia, including paving and structures, from the land'. The operational development is not alleged in its own right and so there is no need for me to consider it separately under ground (c).
34. The use of land within the curtilage of the dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse does not, given the provisions of section 55(2)(d) involve the development of land. These circumstances subsisted at the date of the notice. The appeal under ground (c) therefore succeeds and the notice shall be quashed.

Conclusions

35. On the balance of probabilities, the appeals on ground (c) should succeed in respect of those matters which, following correction of the notice, are stated as constituting the breach of planning control.
36. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (d) and (a) do not fall to be considered.

Formal Decisions

37. It is directed that the enforcement notice is corrected by:
 - i. In Section 2 of the notice, deletion of the word '*shaded*' and replacing it with the words '*edged in red and hatched in purple*'.
 - ii. Deletion of drawing '*A Plan showing site at: 4 Harvestile Lane, Pentney King's Lynn, date: 15 May 2023*' and its replacement with drawing '*A*

Plan showing Site at: 4 Harvestile Lane, Pentney, King's Lynn, date: 1st April 2025', as attached to this decision letter.

38. Subject to the corrections above, the appeals are allowed and the enforcement notice is quashed.

E Brownless

INSPECTOR

A Plan showing Site at: 4 Harvestile Lane, Pentney, King's Lynn date 1st April 2025

ENFORCEMENT OF PLANNING CONTROL

Town and Country Planning Act 1990
(As amended by the Planning & Compensation Act 1991)
Environmental and Planning, King's Court, Chapel Street
King's Lynn, Norfolk, PE30 1EX
Tel: (01553) 616200
Website: www.west-norfolk.gov.uk

Borough Council of
**King's Lynn &
West Norfolk**



A Plan showing site at: 4 Harvestile Lane, Pentney, King's Lynn

Ref: 23/00264/UNAUTU	Grid Ref: 573176 313906
Date: 1 st April 2025	Scale:

