



Appeal Decision

Site visit made on 6 October 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th October 2026

Appeal Ref: APP/V2255/X/24/3355321

740 Heeley Close, Kent Science Park, Sittingbourne, Kent, ME9 8HL

- 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 Jazz Pharmaceuticals against the decision of Swale Borough Council.
 - The application ref 24/503484/LAWPRO, dated 19 August 2024, was refused by notice dated 15 October 2024.
 - The application was made under 192(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 described as '*new front entrance canopy set to the north façade of building 740 at approximately 4m height above ground.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has referred to a previous appeal decision relating to land adjacent to another unit on this Science Park (*APP/V2225/X/23/3318631*) whereby curtilage was an issue, and for which I was also the Inspector. Within that decision letter I referred to the judgement of *Hiley v SoS* [2022], which involved the proposed erection of a steel-clad workshop and storage building on a site adjoining a business park, and the particular issue was whether the proposal would be within the curtilage of the adjacent business park buildings.
3. In the above case the judge ruled that curtilage is not necessarily a feature constrained to a small area around a building and that, in the particular instance involved, the appeal site and the business park did not have to form part of a single enclosure.
4. However, case law on the issue of curtilage is a matter of fact and degree and thereby site sensitive, which is often the case with planning concepts. In general, commercial curtilage is not simply all land used by the business. A closely associated yard, car park or landscaped area may also fall within the building's curtilage. The concept of one enclosure is also a consideration. More specifically, in the previous appeal referred to I disagreed with the Council and found that the piece of land at issue could be considered as curtilage.
5. The starting point is the authority of *Methuen-Campbell v Walters* [1979] QB 525 where the Court of Appeal described the essential question as whether the land the land or structure is so intimately associated with the principal building that it can reasonably be regarded as part and parcel of it. That remains the curtilage test,

and the case was referred to in the subsequent judgements of *Challenge Fencing Ltd v SSHCLG* [2019] EWHC 553, and *R Hampshire CC v Blackbushe Airport Ltd* [2021] EWCA Civ 398.

Main Issue

6. The main issue is whether the Council's decision not to issue a LDC was well founded.

Reasons

7. In an appeal under s195 of the 1990 Act (as amended) against the refusal of a LDC the planning merits and/or impacts of the development applied for do not fall to be considered. Instead, the decision is based strictly on evidential fact, applicable legislation and, where relevant, case law. The burden of proof is on the appellant, and I shall reach my decision on the evidence before me.
8. The Council, in its decision notice, refers to Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Paragraph H1(e) thereto stipulates that development is not permitted by Class H if any part of the development would be within 5 metres of any boundary of the curtilage of the premises. It appears to me to be the only contentious issue in this appeal.
9. With reference to the 'intimate association' test unit no 740, and the narrow strips of land within its grounds beyond, are bounded on three sides by roads; Guillat Avenue, Popjack Road, and the narrow access road off the latter leading to Heeley Close. On this basis I am satisfied that the perimeter land surrounding the unit on these three sides constitutes the unit's commercial curtilage, and the proposed canopy would thereby be positioned within 5 metres of the site's northern boundary.
10. The *Hiley* case was concerned with the individual circumstances involved relating to that specific proposal which involved a unit sited just outside the particular business park itself. Although certain principles are noted I have concluded that the all encompassing *Methuen-Campbell* judgement is most relevant to the current appeal. In the circumstances I must agree with the Council's assessment, and the proposed development would not represent permitted development and must requires the benefit of planning permission. The Council's decision was, therefore, well founded.
11. As such, the proposal should be assessed against relevant planning policies. On this point I note that the Design and Access Statement submitted at the application stage indicates that the proposed development satisfies the aims and requirements of such. Should an application be made for planning permission then the acceptability of the proposal must, though, remain a matter between the two main parties.
12. For the reasons given above I conclude that, on the evidence available, the appeal should not succeed. Accordingly, I shall exercise the powers transferred to me under section 195(3) of the 1990 Act, as amended.

T C King

INSPECTOR