

Appeal Statement

Local Authority Ref: **HPK/2021/0058**

Appeal by Mr & Mrs K. Povah

Appeal against the refusal of planning permission for:

Certificate of Lawful Development for the proposed removal of existing outbuilding, erection of new outbuilding comprising Motorbike Store, Garden Store, Workshop. Creation of additional hardstanding in the form of permeable gravel which will serve as access to the new outbuilding.

At: Thorncroft, Lower Hague, New Mills, Derbyshire, SK22 3AP

Town & Country Planning Act 1990 (as amended)

Planning and Compulsory Purchase Act 2004

Document Control

Issue	Date	Author	Comment
DV	17/11/2022	CT	-
SV	29/11/2022	CT & STC	

QUESTION	ANSWER
Name of LPA	<i>High Peak Borough Council</i>
LPA reference number	<i>HPK/2021/0058</i>
Date of the application	<i>Made valid on 16 April 2021</i>
Date of LPA's decision	<i>Decided 13 August 2021</i>
Is the address of the affected land the same as the appellant's address?	<i>Yes / No</i>
Are there any health and safety issues at, or near, the site which the Inspector would need to take into account?	<i>Yes / No</i>
Please give a precise description of the proposed or existing use, operation or activity as outlined in the application in respect of which a certificate is sought	<i>Domestic use for purposes incidental to a dwellinghouse</i>
Which section was the application made under?	<i>Section 192</i>
Please state the actual use of the site at the time of application to the LPA.	<i>Residential – Domestic Planning Unit</i>
Is there an effective enforcement notice on the site?	<i>Yes / No</i>
The reason for the appeal is that the LPA has:	<i>Refused to grant a certificate of lawful development.</i>
Which procedure does the appeal follow?	1. Written Representations 2. Hearing 3. Inquiry
Have you sent other appeals for this or nearby sites to us which have not yet been decided?	<i>Yes / No</i>

CONTENTS

1	INTRODUCTION	4
1.2	Reason for Refusal	4
2	APPEAL SITE	6
2.1	The Appeal Site	6
2.2	The Appeal Site – Planning History	7
2.3	Historic Aerial Imagery	7
2.4	Lawful Domestic Planning Unit	7
2.5	Extent of Curtilage – Use and Function	8
3	APPEAL PROPOSALS - OVERVIEW	9
3.2	APPEAL PROPOSALS – CLASS E	10
3.3	APPEAL PROPOSALS – CLASS F	11
4	OVERVIEW OF OFFICER REPORT	12
5	APPELLANTS’ CASE - LEGAL FRAMEWORK	13
6	APPELLANTS CASE - THE CURTILAGE	14
7	CONCLUSION	16

APPENDICES

APPENDIX A	DECISION NOTICE (HPK/2021/0058)
APPENDIX B	HISTORIC MAP REGRESSION
APPENDIX C	REGISTERED TITLE
APPENDIX D	EXTENT OF CURTILAGE
APPENDIX E	OFFICER REPORT (HPK/2021/0058)

1 INTRODUCTION

1.1.1 Crowley Associates Ltd are instructed by Mr and Mrs K. Povah (the “Appellants”) to act on their behalf in respect of an appeal against the refusal¹ by High Peak Borough Council (the “Local Authority”) of a certificate of lawful development application, reference: HPK/2021/0058 (the “application”).

1.1.2 The application relates to the property referred to as Thorncroft, Lower Hague, New Mills Derbyshire, SK22 3AP (the “appeal site”). The appeal site is within the ownership of the Appellants’ parents, Mr and Mrs Povah Senior.

1.1.3 The application was validated on 16 April 2021. The description of the development (the “appeal proposal”) as it appears on the decision notice is as follows:

Certificate of Lawful Development for the proposed removal of existing outbuilding, erection of new outbuilding comprising Motorbike Store, Garden Store, Workshop. Creation of additional hardstanding in the form of permeable gravel which will serve as access to the new outbuilding.

1.1.4 The appeal is being made pursuant to s195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) (the “Act”). This Statement of Case is submitted in accordance with Part 2 of the Town and Country Planning (Written Representations) Procedure (England) Regulations 2009 (as amended).

1.2 Reason for Refusal

1.2.1 The application was refused on 13 August 2021 on one ground as follows:

1. *The proposed outbuilding and hard standing would be outside the boundary of the curtilage of the dwellinghouse at Thorncroft and would therefore not comprise permitted development under Schedule 2, Part 1, Classes E and F of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended*

¹ Decision notice attached at **Appendix A**

1.2.2 The Reason for Refusal (the “RfR”) raises the following main issue:

- The extent of the curtilage to the existing dwellinghouse

1.2.3 The Appellant’s position is that having considered the main issue, the development specified in the appeal proposal falls within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) and is lawful.

Table 1 - List of Documents Submitted with the Application

Document Title	Date of Document
Application Forms	April 2021
Supporting Statement	April 2021

Table 2 - List of Drawings submitted with Planning Application

Drawing No.	Drawing Title	Date of Drawing
PT138-PTA-00-ZZ-DR-A-00001	Site Location Plan	August 2020
PT138-PTA-00-ZZ-DR-A-00003	Existing Site and Roof Plan	April 2021
PT138-PTA-00-ZZ-DR-A-00020	Existing Plan and Elevations	April 2021
PT138-PTA-00-ZZ-DR-A-00102	Proposed Site/Block Plan	April 2021
PT138-PTA-00-ZZ-DR-A-00130	Proposed Floor Plan – Store / Workshop	April 2021
PT138-PTA-00-ZZ-DR-A-00140	Proposed Sections – Store / Workshop	April 2021
PT138-PTA-00-ZZ-DR-A-00150	Proposed Elevations – Store / Workshop	April 2021

2 APPEAL SITE

2.1 The Appeal Site

- 2.1.1 The appeal site comprises a domestic planning unit containing a dwelling, which dates from the late 20th Century with garden. The dwelling is split-level, faced in a mix of stone and render, and sits under a pitched, concrete tiled roof. The property with gated access, is set below the level of the road (the B6101).
- 2.1.2 The driveway leading from the B6101 wraps around the dwelling and is surrounded to the east and south by a stone retaining wall. Due to the topography of the site, which drops sharply across the appeal site (north to south), steps provide access to a small, decked area and a small, terraced garden located to the south (rear) of the dwelling. The garden area is difficult to access and provides more in the way of an outlook from the property rather than useable amenity space.
- 2.1.3 To the east of the dwelling and the driveway (and sat largely at level) is a strip of orchard that runs in a north-south direction and is enclosed by a post and rail fence. The garden then continues eastwards with an area of mown lawn which contains sheltered seating. This area terminates (at its southern extent) in line with the terraced garden to the rear of the dwelling and the rear gardens of neighbouring properties to the west of the appeal site. Beyond this point, the remainder of the appeal site (to the south) functions as a wild meadow and is regularly mown/topped.
- 2.1.4 This part of the garden contains a building (the “outbuilding”), originally erected to stable horses which were grazed on the property, and which is now used for storage purposes.
- 2.1.5 The building is permanent in nature, and of substantial construction. It sits on a concrete plinth (the developed footprint), which measures approximately 220sqm in area. Access to it is obtained directly from the driveaway. It does not benefit from its own independent access. The route of the access to the outbuilding is contained by a post and rail fence.

2.2 The Appeal Site – Planning History

2.2.1 There are a number of applications associated with the appeal site, as follows:

- **HPK/0003/3130** – One Detached House and garage – Refused January 1994
- **HPK/2017/0219** – Proposed demolition of existing outbuilding and erection of a single dwelling – Refused December 2019
 - Dismissed at appeal in June 2020 (APP/H1033/W/19/3229290)
- **HPK/2021/0058** - Certificate of Lawful Development for the proposed removal of existing outbuilding, erection of new outbuilding comprising Motorbike Store, Garden Store, Workshop. Creation of additional hardstanding in the form of permeable gravel which will serve as access to the new outbuilding (Application to which this appeal relates).
- **HPK/2022/0478** - Extension to existing outbuilding – this householder application has been made valid by the Local Authority and is currently under their consideration

2.3 Historic Aerial Imagery

2.3.1 A historic map regression is contained at Appendix B. The regression presents aerial imagery of the appeal site from December 1999 to March 2022.

2.4 Lawful Domestic Planning Unit

2.4.1 The entirety of the appeal site has always been registered under a single title, reference **DY224766** (included at Appendix C) and as shown on the Site Location Plan (Dwg No. PT138-PTA-00-ZZ-DR-A-00001). Since the latter part of the 20th Century the appeal site (including large area to the south of the outbuilding) has been put to domestic use without cessation for a period of more than 10 years. There is some indication in Appendix B, and specifically the aerial imagery from October 2010, that sheep were present on the appeal site. These sheep were not grazed on the land nor were they used for their wool or any other produce.

- 2.4.2 The outbuilding was erected, by the original owner, pre-1990 and used for purposes incidental to the dwelling to support his keeping of horses (within the wider site), for personal recreational use. When the property changed ownership (having been acquired by Mr and Mrs Povah Senior in May 2013), the use of the outbuilding, and the wider site for the keeping of horses, ceased, and the outbuilding was given over to use as domestic storage directly associated with the dwelling.
- 2.4.3 The area of mown lawn immediately to the south of the outbuilding is now used by Mr and Mrs Povah Senior for amenity purposes (more detail on the use and function of this area of garden is contained at Section 2.4 below).
- 2.4.4 The remainder of the appeal site is used for the personal enjoyment of the owners as a wild meadow; it has been used continuously for a period of more than 10 years for the purposes of recreation and play by Mr. and Mrs. Povah Senior's children and grandchildren as well as family pets; and continues to be used (periodically) to host parties (at least twice a year) for friends and relatives.
- 2.4.5 It is irrelevant for the purposes of this appeal whether the parties agree on the full extent of the lawful domestic planning unit. It is only relevant whether the land on which the appeal proposal is to be located is considered to comprise part of curtilage to the dwelling.

2.5 Extent of Curtilage – Use and Function

- 2.5.1 Where the parties disagree is over the extent of the curtilage (which is a concept in law and not a land use for planning purposes) of Thorncroft.
- 2.5.2 The Appellants are of the view that the area of land identified at Appendix D – all of which functions in a manner that is coincidental with and incidental to the enjoyment of Thorncroft - amounts to the curtilage of Thorncroft.
- 2.5.3 The outbuilding itself is used for domestic storage; and the land adjacent the outbuilding is used as cultivated garden.
- 2.5.4 The outbuilding and the area adjacent are integral to Mr and Mrs Povah Senior' enjoyment and use of their property. Mr and Mrs Povah Senior are becoming elderly, and as such, they are heavily reliant on the accessibility of this part of the appeal site as an area of recreation and for sitting and relaxing. This part of the appeal site is not only critical to the

enjoyment of their property but also in helping to manage their wellbeing, now and in the future.

- 2.5.5 Further comment on the extent of the curtilage to Thorncroft is set out within the Appellant's Case at Section 6 of this Statement.

3 APPEAL PROPOSALS - OVERVIEW

- 3.1.1 The appeal proposals, detailed on the Proposed Site/Block Plan (Drawing No. PT138-PTA-00-ZZ-DR-A-00102), comprise the:

- Removal of the existing outbuilding; and
- Erection of new outbuilding to accommodate:
 - Motorbike Store;
 - Garden Store;
 - Workshop
- Creation of additional hard surfacing in the form of permeable gravel which will serve as access to the new outbuilding.

- 3.1.2 The appeal proposals are considered to comprise 'Development within the curtilage of a dwellinghouse', in accordance with Part 1 of Schedule 2 of the Town and Country (General Permitted Development Order 2015 (as amended) (the "Order").

- 3.1.3 With reference to that Schedule, the following 'Classes' are of direct relevance to this appeal:

- Class E (buildings etc incidental to the enjoyment of a dwellinghouse)
- Class F (hard surfaces incidental to the enjoyment of a dwellinghouse)

3.2 APPEAL PROPOSALS – CLASS E

3.2.1 The proposed outbuilding will comprise a combined motorbike, garden store and workshop. It will not only provide an amount of storage equivalent to that currently afforded by the existing building but additional storage space for purposes that are incidental to the dwelling.

3.2.2 The relevant dimensions of the proposed outbuilding, and the proportion of the curtilage to be occupied by said outbuilding are set out within Table 3 below:

Table 3: Dimensions of Proposed Outbuilding

Dimension/Measurement	Value
Height to Ridge	4.0m
Height to Eaves	2.5m
Footprint of Proposed Outbuilding	272 m ²
Area of the curtilage (excluding the ground area of the original dwellinghouse) as identified in Appendix D	2977 m ²
Ground area covered by buildings, enclosure and containers within the curtilage (other than the original dwellinghouse) (including proposed outbuilding)	272 m ²
Percentage of the total area of the curtilage (excluding the ground area of the original dwellinghouse) covered by buildings, enclosure and containers within the curtilage (other than the original dwellinghouse)	9.14 %

3.2.3 The Supporting Statement which accompanied the application, from Section 6.2, assesses the proposed outbuilding's compliance with Class E of the Order. In summary:

- The use of Thorncroft as a dwellinghouse has not been granted by virtue of Classes M, N, P, PA or Q of Part 3 of Schedule 2 of the Order
- The amount of ground covered by buildings within the curtilage of the dwelling will not exceed 50% of the total area of the curtilage to said dwelling.

- The outbuilding will:
 - Be put to a use that is incidental to the enjoyment of Thorncroft
 - Not extend beyond the principal elevation of the original dwelling
 - Be a single storey structure
 - Will have a dual pitched roof and will not exceed 4 metres in height
 - Will have eaves that do not exceed 2.5 metres in height
 - Not be situated within the curtilage of a listed building

3.3 APPEAL PROPOSALS – CLASS F

3.3.1 The proposed hard surfacing will be put to use for purposes that are incidental to the enjoyment of the dwelling designed to serve the new motorbike store, garden store and workshop building.

3.3.2 The Supporting Statement which accompanied the application, assesses, from Section 6.2, the proposed hard surfacing's compliance with Class F of the Order. In summary:

- The use of Thorncroft as a dwelling has not been granted by virtue of Classes M, N, P, PA or Q of Part 3 of Schedule 2 of the Order
- Thorncroft was not built under Part 20 of Schedule 2 of the Order
- All hard surfacing which is situated forward of the principal elevation, and which is greater in area than 5 m² is to comprise gravel which is considered a porous material

4 OVERVIEW OF OFFICER REPORT

4.1.1 According to the officer report (the “Report”)², the Local Authority does not consider the area of the appeal site (to which the outbuilding and hardstanding are proposed to be sited) to fall within the curtilage of the existing dwelling.

4.1.2 The position reached by the Local Authority has relied upon the Oxford English Dictionary definition of Curtilage, which defines it as *an area of land attached to a house and forming one enclosure with it*.

4.1.3 The Local Authority accepts in the Report that the existing outbuilding *has been in use for domestic purposes in association with the house for some time*. However, the Local Authority considers that:

...the area [containing the outbuilding] is enclosed separately to the house and its gardens, which are enclosed by well-established walls and fences. This area ... does not form part of the same enclosure. As such it is not considered [to form] part of the curtilage of the dwellinghouse.

4.1.4 The Local Authority states further that:

a significant portion of the proposed building (perhaps 9m in length) would extend beyond the boundary fences enclosing the stables and the smaller enclosure at the immediate east and would be placed within the main field. It is clearly apparent that this area of the property is even more distinctly not part of the curtilage of the dwellinghouse, comprising an extensive field with no domestic function related to the house.

4.1.5 Other than in relation to the extent of the curtilage to Thorncroft, the Local Authority has not assessed the appeal proposal’s compliance with the other relevant aspects of Classes E and F of the Order. The Appellants have already undertaken this exercise at Section 3 of this report and so the remainder of the Statement aims to address the matter of curtilage.

² Officer Report attached at Appendix E

5 APPELLANTS' CASE - LEGAL FRAMEWORK

- 5.1.1 The extent of the curtilage to Thorncroft is a matter to be determined on site. However, the following is a legal opinion, provided by Thea Osmund-Smith ("Counsel") in relation to a previous appeal associated with the appeal site³. The opinion is useful as a point of reference in determining the extent of the curtilage to the dwelling. In providing their opinion, Counsel cites various case law and states:

"Lord Donaldson MR explained the approach to be taken to curtilage in **Dyer v Dorset CC** [1989] 1 QB 346, at 355B: "[The question of determining the extent of the curtilage] *is a question of fact and degree and thus primarily a matter for the trial judge, provided that he has correctly directed himself on the meaning of 'curtilage' in its statutory context.*"

At 358B-G, Nourse LJ further discussed the meaning of curtilage by reference to the Oxford English Dictionary definition: "*A small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its outbuildings.*"

He then accepted the proposition drawn from the authorities in that case that "*an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached*" (358D-E).

In **Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions** [2001] QB 59, the Court of Appeal noted that it is the relationship between the main dwelling and the land in question which is relevant when considering function/use. Furthermore, the concept of "smallness" is not relevant when determining the curtilage of a building. Robert Walker LJ said at 67: "*I ... respectfully doubt whether the expression 'curtilage' can usefully be called a term of art... It is, as this court said in Dyer's a question of fact and degree*".

³ Appeal reference: APP/J4423/W/18/3202746

Robert Walker LJ continued:

“In the context of what is now Part 1 of the Act, the curtilage of a substantial listed building is likely to extend to what are or have been, in terms of ownership and function, ancillary buildings. Of course, as Stephenson LJ noted in the Calderdale case, 46 P&CR 399, 407, physical ‘layout’ comes into the matter as well. In the nature of things the curtilage within which a mansion’s satellite buildings are found is bound to be relatively limited. But the concept of smallness is in this context so completely relative as to be almost meaningless, and unhelpful as a criterion.”

In **Lowe v Secretary of State** [2003] EWHC 537 (Admin), Sir Richard Tucker reviewed the relevant authorities and commented:

“21. Of the authorities cited to me, I derive most assistance from the decision of the Court of Appeal in Dyer v Dorset CC, and in particular the judgment of Nourse LJ in the passage already referred to at p.358F-G. The expression ‘curtilage’ is a question of fact and degree. It connotes a building or piece of land attached to a dwelling house and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house. But it cannot possibly include the whole of the parkland setting in which Alresford Hall lies, nor the driveway along which the fence was erected. It could not sensibly be contended that the site of the fence was attached to the hall, or that it formed one enclosure with it, or was part of the enclosure of it.”

6 APPELLANTS CASE - THE CURTILAGE

- 6.1.1 In reaching its decision, the Local Authority has relied upon the definition of curtilage as it appears within the Oxford English Dictionary (the “OED”). The OED defines curtilage as *an area of land attached to a house and forming one enclosure with it*.
- 6.1.2 The Local Authority considers the area on which the outbuilding is to be located does not form one enclosure with the dwelling and as such does not belong to the curtilage of the dwelling.

- 6.1.3 The position established in case law, as evidenced within Counsel's opinion (see Section 5), is that, when defining curtilage, consideration must be given to:
- Whether the land forms part and parcel with the dwelling; and
 - The function and use of the land in question
- 6.1.4 In the Appellants' view, the Local Authority has assessed matters in an overly restrictive manner. They accept that walls and fences are present on the appeal site, but they contend that the presence of said walls and fences alone is not determinative.
- 6.1.5 It would be perfectly ordinary, for example where land and buildings are given over to the keeping of horses (in a manner that is incidental to the use of the dwelling), for such land/buildings to be enclosed by some form of physical barrier, whilst remaining within the curtilage to the dwelling. In addition, it is commonplace for a vegetable garden serving a dwelling to be enclosed in order to prevent pets, other animals from gaining access, and it is often the case that where play equipment is installed within the curtilage of a dwelling that said equipment is enclosed/screened.
- 6.1.6 In short it is commonplace to find, within the curtilage of a dwelling, fences, walls, and other means of enclosure being employed to define/prevent access to certain areas, manage level changes; or simply for aesthetic purposes.
- 6.1.7 The fact is, and the Local Authority agrees, that at present, the existing outbuilding and the land over which it is accessed and on which it is sited is used for domestic purposes in the form of storage - a use that is incidental to the enjoyment of the dwelling. In addition, it is a fact, taking into consideration how matters appear on the ground, that the area of land over which the appeal proposal is to be accessed and on which the appeal proposal is to be sited is intimately associated with the enjoyment and function of the dwelling. It cannot be accessed except via the dwelling. It cannot be used except in association with the dwelling. It has no purpose except to further Mr and Mrs Povah's enjoyment of their dwelling.
- 6.1.8 It is the Appellants' position that the extent of the appeal site identified in Appendix D falls within the curtilage to the dwelling.

7 CONCLUSION

7.1.1 The Appellants' position is that the extent of curtilage to Thorncroft extends to that identified within Appendix D and have reached this position due to its:

- Use and function
- Intimate association with Thorncroft
- Proximity to Thorncroft
- Visual connection to Thorncroft
- Common ownership
- Prescence within a single domestic panning unit

7.1.2 In addition to the above, the appeal proposals, as demonstrated within Section 3 of this Statement, are in accordance with all other provisions of Classes E and F of the Order.

7.1.3 In light of the above, it is the view of the Appellant that the development specified in the appeal proposals is lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), and as such, a Certificate of Lawful Proposed Development should be issued.