Planning & Development Control
Shropshire Council
PO Box 4826
Shrewsbury
SY1 9LJ

SUBMITTED VIA THE PLANNING PORTAL

04/08/2023

Dear Sirs

PROPOSED CERTIFICATE OF LAWFULNESS AT MISTLETOE COTTAGE, CROWS NEST, SNAILBEACH

Our ref: DA111515 - Watts
Your ref: N/A

1) EXISTING USE:
RESIDENTIAL USE OF LAND FOR PRIVATE ENJOYMENT (RESIDENTIAL CURTILAGE) (IN EXCESS OF 10 YEARS)

2) PROPOSED LAWFUL DEVELOPMENT:
THE CONSTRUCTION OF A HARD STANDING WITHIN THE ESTABLISHED CURTILAGE

3) PROPOSED LAWFUL USE:
SITING OF A TWIN-UNIT "CARAVAN" FOR PURPOSES INCIDENTAL / ANCILLARY TO THE DWELLINGHOUSE

We act for Mr D Watts - the owner of:

Mistletoe Cottage
Crows Nest
Snailbeach
Shrewsbury
Shropshire
SY5 0LU

Site location:
W3W: https://w3w.co/what3words.com/surcharge.behave.resurgent
Site OS Grid reference: SJ 368 015

SUMMARY

This submission for a Certificate of Lawful Development is tendered to Shropshire Council, consequent to a mostly unresolved pre-application advice request lodged in May 2023, which has been attached herewith for easy reference.

Despite our efforts to participate in productive pre-application dialogue / negotiation with the planning authority, the pre-application request remains largely unanswered and without a comprehensive resolution or proper consideration. Consequently, in the absence of a feasible or reliable alternative, the applicant has instructed Bondstones to proceed with this application for a Certificate of Lawfulness to accommodate his needs.

While we acknowledge, prima facie, that this application may bear resemblance to a previously determined application and a subsequently dismissed appeal at the same site, it is vital to clarify that the dismissal of the appeal hinged on a submission that failed to provide adequate detail to allow the LPA or Inspector to properly consider the proposed 'caravan' (lodge) or site with appropriate detail. The previous applications thus failed to substantiate the established 'use' of the land (for residential purposes) and the property's curtilage was left undefined.

More to the point, the appeal was dismissed on the basis of a faulty drawing (section) which failed to show the internal ceiling of the proposed 'lodge'– which could have been simply resolved with proactive engagement between the LPA and the applicant at that time.

We wish to underscore that issues have been thoroughly rectified in this new submission for a Certificate of Lawfulness, with evidence now provided to demonstrate that 'on the balance of probability' and in the face of reasonable assessment, the established residential 'use' of the land and thus the residential curtilage extends to well in excess of 24 years (although more *probably* >50 years).

While this application may have been dealt with by way of a lighter package the pre-app response received and noting previous consideration by a previous case officer to a similar application at the same site has given rise to the expectation that an appeal will become necessary… As such this supporting document has sought to cover all bases and to provide the LPA / Inspector sufficient detail to enable positive determination of the application as soon as possible.

ASSERTIONS

'1' EXISTING USE

The applicant asserts that the private garden - the site in question – shown below and unequivocally linked to Mistletoe Cottage - has been in exclusive use for private residential/domestic purposes by the occupants of Mistletoe Cottage, uninterrupted for an extended period, significantly beyond the recent last 10 years. Consequently, it is "exempt from enforcement" against *unlawful* use per Section 171B of the Town & Country Planning Act 1990. Its use should thus be considered lawful per s.191 of the same act.

Mistletoe Cottage in December 2018 (exhibiting little change since aerial images of 2010 / 1999)
Note especially orchard trees, Greenhouse (●), raised planters (●), domestic cattery (●) proposed hardstanding location (●)

It is worth observing that although the submission seeks to clarify the planning position by qualifying the use of land via TCPA Section 171B's '10 year rule' (and so should be considered 'lawful' courtesy s.191), the property and its surrounding curtilage have undoubtedly been in existence for a much longer duration than our earliest evidence (dating back to 1971) indicates.

Historically, it is a well-established fact that prior to its conversion into a dwelling, the property functioned as 'a shop' as indicated by OS Mapping. It is therefore more than plausible that the entire parcel, as outlined in the 1971 conveyance, predated the implementation of the 1948 planning act…

Based on these circumstances, it appears on balance that the current 'garden' *also* formed part of the shop's curtilage, inclusive of the shopkeeper's residential quarters, dating back to before 1880. However, due to limited public records, it can be inferred that a 'breach of planning control' most likely arose just before the 1971 conveyance – but certainly very well before the summer of 2013 (>10 years from the date of application)…

Clear evidence of the land's association, layout, and recent use in connection with the dwelling house is provided through aerial and terrestrial images, past planning applications, Local Authority mapping systems, Ordinance Survey map-data, previous conveyance, and (if so required) testimonies from independent witnesses to the fact.

Note that, while available, witness testimonies have not been included with the CoL application at this stage. If necessary, the applicants gardener / handyman (Harry Coyle) has been attending to the property for well in excess of 10 years and can be called upon to provide a statement and a diary of work – if required. His statement has not been included from the outset as it is believed that the burden of proof is easily met without inconveniencing a 3rd party for input…

'2' PERMITTED DEVELOPMENT

The provided evidence, which definitively establishes the historical use and functional association beyond 'the balance of probability', corroborates that the garden at Mistletoe Cottage is both established and lawful—most certainly predating the applicant's acquisition of the property in 2017.

Therefore, the curtilage - identified as the site boundary of this application - is entitled to 'householder' permitted development rights granted to the applicant under the General Permitted Development (England) Order 2015 (GPDO), as amended.

'2' PROPOSED DEVELOPMENT

With the curtilage of the dwelling clearly delineated and evidenced through this application, the applicant intends to carry out works to create / finish a "hard surface" within the defined garden boundary of the property, as highlighted in the attached plans.

This proposed work is stated to fall under the parameters of permitted development as per the General Permitted Development Order (GPDO) - Schedule 2 - Part 1 - Class F, which governs the creation of a hard surface within a dwellinghouse's curtilage.

Once the hard surface has been successfully completed, the applicant proposes to utilise this newly created area for purposes that are supplementary and incidental to the enjoyment of the dwellinghouse, a right to which he is duly entitled…

'3' PROPOSED USE OF LAND

Beyond the construction of a hard surface, the applicant intends to utilise his domestic land (as identified in the enclosed plans) to site a "caravan" - a twin unit caravan in this case - for flexible ancillary uses, incidental to the enjoyment of his residential property. The intended use will provide annexe accommodation, offer space for use as a "summer house" - including games room, home office, and for private recreation / gym purposes.

Irrespective of the definitive location of the curtilage of the property the siting of a caravan for such incidental / ancillary domestic purposes does not represent a 'change of use' of the land and is to occur within the planning unit.

As such the proposed use of land does not constitute development as stipulated by Section 55 of the TCPA.

The same position has been examined and upheld at appeal on numerous occasions, with a notable case (amongst many) being the appeal at 'Hackness House', the details of which have been attached for reference.

SUMMARY OF EXISTING & PROPOSED USES

As will be demonstrated in this planning statement the long established and extant curtilage of Mistletoe Cottage is clearly defined. Works to create a "hard surface" within the curtilage are compliant with the provisions of the GPDO 2015 (as amended).

In addition the proposed use of land for siting a caravan for ancillary domestic use (within the planning unit) does not constitute 'development' per s.55 of the TCPA 1990 and thus does not require planning consent and should be considered "lawful" per s191.

CAVEAT

Please note that while this application asserts the lawfulness of the creation of a hard standing within domestic curtilage, some images presented in this application show a part built concrete block wall around the area of the proposed hard standing (which the applicant had [correctly] assumed was permitted development within his residential curtilage).

While the creation of walls etc are *allowed* by the GPD(E)O 2015, the blockwork (where shown) should be disregarded and is not claimed as an existing / proposed permitted development structure - nor included in this application for consideration.

Where presented, affected images will be marked "NB: blockwork to be removed" and the blockwork should be disregarded.

SITE PLANNING HISTORY

APPN
SS/1988/710/P/
INSTALLATION OF AN L.P.G. TANK.

APPN SS/1/7576/P
ERECTION OF A TWO STOREY EXTENSION, MISTLETOE COTTAGE – APPROVED

Despite endeavours to clarify the curtilage position through a pre-application in May 2023, both the 1988 and 1997 planning applications referenced above are unavailable to view through the council's planning website.

Consequently, it seems clear that *neither* of these applications has been considered by the Local Planning Authority either in recent planning determinations or at subsequent appeal proceedings, nor in relation to our unresolved pre-application advice request.

Nonetheless, the site boundary maps (recorded by the LPA) are accessible via https://pa.shropshire.gov.uk/ and suggest that the entirety of the asserted 'modern' domestic curtilage falls within that previously identified.

In actuality, the current curtilage (site boundary) is now smaller than what was recorded in both 1988 and 1997.

This position, as evident from both previous applications, aligns with the location of the property's curtilage as stated in the 1971 conveyance (see 'conveyance' section later in this document). It is important to note that the 1988, 1997, and 1971 maps and documents exhibit the exact same 'red line' application boundary.

SITE LOCATION PLAN – SS 1988/710/P & SS/1/7576/P

Note that the OS data underlying the site boundary in the above screenshot is more recent and does not necessarily describe linear features (boundaries) as they might have been found / recorded in 1988/97 - but none the less this shows the recorded 'site boundary' and which was has not been corrected by the LPA either then, or since.

The current OS Data (underlay map) does corroborates the current lie of the land (as at 2023).

21/05826/CPL

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE PROPOSED SITING OF A RESIDENTIAL LODGE - ANCILLARY TO THE MAIN HOUSE – REFUSED

This 2021 application was refused by the LPA on the basis that there was a lack of sufficient information concerning the proposed use of a proposed "lodge", its legal standing / definition as a caravan, and consideration of what is, and is not, residential 'curtilage'.

Both points should be resolved fully by *this* new application.

Note that the applicant's agent (in the 2021 application) identified the curtilage as the extents of the garden serving Mistletoe Cottage (as it now stands) according to Ordnance Survey MasterMap data (rather than a detailed survey) – and that this area is substantially smaller than the land identified in the previous planning applications *and* the 1971 conveyance.

SITE LOCATION PLAN - 21/05826/CPL

NOTE: The 2021 position is asserted as the extant / modern curtilage (OS mapping data is considered to be 'current').

ASSESSMENT OF OFFICERS REPORT (21/05826/CPL)

The case officer's notes appended to the planning file for the application require several corrections and were misleading to say the least:

> *6.1.11*
>
> *The lodge would be sited south west of the main dwelling on the site. A google maps image shows this parcel of land to be previously covered by a number of trees. During the officer site visit on 28th January 2020, a number of tree stumps were visible in the ground, indicating that the trees previously present on the site had been removed.*

THIS STATEMENT IS INACCURATE.

The 'number' of trees previously 'on site' were indeed apple trees – forming an orchard within in the garden of the property. Some of which are still present and are evidence of the extent of domestic garden / curtilage. The group of 'trees' that had / have been completely removed (to the west and outside of the site boundary) were a

grown-up hedge - forming a part of the enclosure (separating the garden / curtilage from the equestrian / non domestic land to the west). See photo:

Image showing two of the remaining orchard trees, the 'timber fence' (see 6.1.12), vegetable planters and grass area "south of the house". The proposed location for the applicants hard standing is situated to the rear. (NB: Blockwork to be removed)

I have assessed the remaining apple trees myself – and would appear (from experience) that these are >30 years of age (+/- 5-10 years) – which would suggest that they were planted by the residents of Mistletoe Cottage sometime around (perhaps after) the 1971 conveyance…

The presence of these pruned / managed domestic fruit trees actually proves the extent of the domestic curtilage included the so called 'wooded area' and that the land around them has continued to be used as domestic garden since well in excess of the 10 years necessary to demonstrate section 171B / 191 requirements.

> *Officer's note 6.1.12*
>
> *A timber fence ran along part of what appeared to be the boundary between the parcel of wooded land and the garden area serving Mistletoe Cottage. During the officer site visit, there appeared to be a difference between the quality of the land/garden area to the very rear (south) of the dwelling and that of the land to the west of the dwelling (where the lodge would be sited). The garden area directly south of the dwelling was clearly grassed over with the presence of a trampoline and washing line. The land to the west was not as well kept, and although there was the presence of some raised planter beds, this parcel of land was not, in my view, a clearly defined garden area.*

The site was visited by the case officer in late January 2020… mid winter… it is not normal to keep grass mown at this time of year and any active garden is unlikely to appear 'well kept' at this time of year…

The 'wooded land' would be known in modern parlance as "an orchard" (which the officer loosely acknowledges in 6.1.13) – providing a supply of fruit / enjoyment to the residents of the residential property. The case officer recognised the applicants raised planters but apparently these did not qualify (in their opinion) as part of the 'garden'.

Indeed, the planters are still in situ today (see image above), in regular use, and solely for the enjoyment of the applicant and his family… as is the lawn and the remaining trees…

As for the 'wooden fence' – which was ostensibly taken by the officer to (incorrectly) define "the curtilage". This is / was a (flimsy) *temporary* fence to prevent the applicants pet dogs from soiling / digging up the vegetable garden. It is / was not the definitive 'ring fence' enclosure of the whole property – not by any means…

See the image on Page 3 to note that the 'new' dog-fence was absent then and has only *recently* been installed by the applicant – and was not present in 2018… indeed there has been no separation of the garden by a fence until very recently…

Despite this being brought to the case officer's attention - this interpretation in-itself is clear evidence that the case officer sought to adopt a pessimistic (rather than a positive or proactive) perspective on their appraisal of the site.

> *Officer's note 6.1.13*
>
> *The 1999 aerial maps show the parcel of land was largely covered by trees, appearing more akin to a small orchard rather than a defined residential garden area. It is unknown when the trees were removed and whether this parcel of land has always been in use as the applicants' residential curtilage, or whether it has been in use as residential curtilage for a period in excess of 10 years. In the absence of this information, it has not been demonstrated that the lodge would be sited within the applicants' residential curtilage and therefore fails to meet this test.*

The officers report is a correct assessment of the existence of the orchard in 1999 - with which we absolutely concur. That is to say that in 1999 the site was clearly 'largely covered in [apple] trees'. Indeed some of those trees have been removed and the whole area is 'still' in ancillary / domestic use.

Image (Google Earth Pro dated 1999) – showing the 'wooded' area of orchard trees.
Note especially the lawn area east of the trees and path from the house leading under the fruit trees…

On the basis of a faulty and inaccurate assessment the case officer failed to relate a small domestic orchard (present in at least 1999 (and probably decades prior) with that area being "the garden" (domestic use) to the property.

Image (Google Earth Pro (dated 2010) – showing the (now pruned) orchard trees…
Clearly these trees have been part of the managed residential garden at Mistletoe Cottage for well in excess of 10 years and are / were not just a rough 'wooded' area.
Note also that this image was available in 2021 – yet the case officer chose only to refer to the 1999 image…

The officer *clearly* failed to act reasonably or to seek reasonable clarification on the previous application's ability to meet compliance with the Caravans Acts (internal dimension). While the case officer *loosely* mentioned the physical and functional link between the 'main dwelling' they wholly failed to consider that a caravan (by legal definition) is a structure built for human habitation and – by very definition - contains all of the necessary facilities for human habitation.

In respect of the officer's conclusion, they failed to recognise that the siting of a caravan within a domestic site (not necessarily even within the curtilage of the house – see the appeal at "Hackness House" for example) is NOT a change of use of land and is not development (s.55 of the TCPA).

Had the application been competently appraised the officer should have recognised that the siting of a caravan on domestic / residential land (within the planning unit) is *not development* (irrespective of whether it is defined as residential curtilage or not…)

It is however recognised that the refusal of the application (base on the applicants / agent's) failure to indicate a ceiling in the proposed caravan was correct… although wholly unnecessary - as a revised section / plan would have been more than adequate to allow a positive decision… None the less this error / miscommunication lead to:

APP/L3245/X/22/3295581

APPEAL DISMISSED

The appeal against the refusal of 21/05826/CPL was dismissed, which was frustratingly due to the assertion that the proposed 'lodge' did not align with the specifications of a caravan as per the Caravans Acts and associated legislation.

This error stemmed solely from the use of an engineer's construction drawing which incorrectly identified the internal "ceiling height". The measurement was, in fact, taken to the underside of the structural timber framework of the proposed caravan. In the supplied drawings, no ceiling was illustrated, leading the inspector to determine by default that 'the lodge' would not be categorised as a twin-unit caravan.

From the Inspectors' summary (para 25);

> *Mistletoe Cottage comprises a detached dwelling which dates from the early 1800's. The dwelling is set in substantial grounds, part of which appears to be in equestrian use. The appellant has requested the LDC on the basis that its use would be ancillary to the use of the main dwelling.*
>
> ***Where a caravan or building is located within the curtilage of a dwellinghouse, the residential use may be regarded as part and parcel of the use of the dwellinghouse, even if it contains the facilities required for day to day living, so long as it remains part of the same planning unit and is occupied by a functionally single household.***

Additionally at para 29 of the inspector's notes;

> *The appellant suggests the wooded area comprised fruit trees and* ***I accept there is no reason in principle why such an area could not be considered part of the curtilage of a dwelling or within residential use****. However, whilst it appears that the land is currently used for residential purposes, as evidenced by residential paraphernalia, including washing, the presence of a fence points towards the land having previously been separated from the residential garden.**

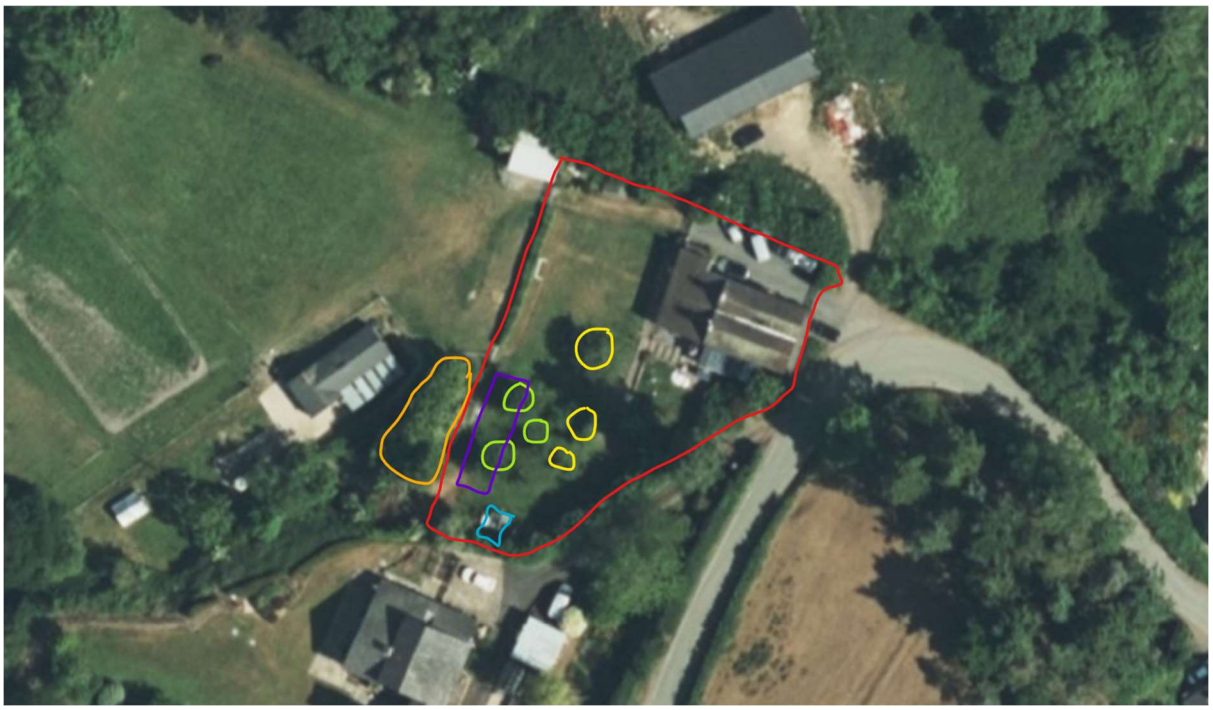
The inspector concluded;

> *Although* ***I have found that the proposed use of the lodge would be part and parcel of the residential use of the main dwelling****, I have found that the lodge would not fall within the definition of a caravan and would be a building, for the purposes of the Act.*
>
> *Furthermore, it has not been demonstrated that the area where the lodge would be sited has a lawful residential use.~~*

* With all due respect to the Inspector's conclusions on this matter, it has been frequently established by the courts that the curtilage of a dwelling can be subdivided and is not defined by the smallest enclosure (see precedent later in this report). The temporary fence was, in fact, erected by the applicant purely to deter his dogs from fouling their vegetable garden and domestic orchard trees - serving this singular purpose.

It is understood that the inspector was not privy to this clarification at the time of the appeal site visit. The presence of the temporary 'dog fence' is in reality a moot point - the entire garden was (and still is) being utilised by the applicant and his family for their private enjoyment on a daily basis.

~~ As such this is the purpose of this CoL application.



For reference the above image (circa 2017) is provide to identify the location of:

- *Location of proposed hardstanding*
- *Cyprus / leylandii hedge / cattery removed*
- *Apple orchard trees removed (2021)*
- *Managed orchard trees remaining (at 2023)*
- *Greenhouse (now removed)*
- *Effective modern curtilage (as asserted)*

2023 PRE-APPLICATION ADVICE

In an effort to attempt to clarify the lawful residential use of the land (and the path to securing that lawful position) Bondstones submitted a pre-app advice request earlier this year - PREAPP/23/00290 (copy attached) - so as to ascertain how the applicant would be best advised to proceed.

An incomplete response (which essentially refused to address the detailed request and sought to answer questions that were not included) was issued via email on 18th May 2023 by Ms. Nia Williams - summarised as follows:

> *I have read the appeal statement and the application and I don't think we can currently agree that the land subject to the application is part of the curtilage for permitted development right purposes. I have taken account of the case law you have provided and researched the same, which has taken considerable time.* ***It is understood that this is arguable****, however we also have to give weight to the decision of the previous Inspector so when weighing all these matters together we have concluded informally that the area lies outside the curtilage of the dwelling for permitted development purposes in a pre-application context.*
>
> *I have taken on board your comments in relation to the Inspectors appeal decision, however the Inspector made it clear that they were considering their response in the context of a future application for a certificate of lawfulness. Para 30 of the appeal decision states "There is limited evidence to show how the area has been used over time. Even if the land was conveyed together with the cottage, this is not an indication that entirety of the site has been in residential use for the requisite period. Consequently the appellant has not shown, on the balance of probabilities, that the land within which the lodge would be sited has been used continuously for residential use for more than 10 years prior to 15 December 2021, the date of the LDC application."*
>
> *It is unfortunate that the matter of the lodge building was taken to appeal, as it is my view that this could have been easily resolved by changing the size and construction of the lodge.*
>
> *… …*
>
> *The hardstanding is part and parcel of the siting of a building / caravan type structure and so falls [sic] to be considered as part of the overall development / change of use, it cannot be considered in isolation as physical development is part of the change of use whether or not it is permitted development.*
>
> *There might be a way forward in terms of what we can approve through planning, and to this end I would draw your attention to the rural exception policy and the possibility of applying for an annex on a similar basis.*
>
> *Please except [sic] this email a response to the original pre application submission.*

The pre-app response ignored the primary point of question at that time – which sought to establish whether or not the garden of Mistletoe Cottage is – or is not – its curtilage (to ascertain this we provided evidence to enhance the LPA's understanding of the site and provided information that was previously absent from discussion).

Furthermore the pre-app response presupposed that the way "around" the question was loosely to advise that a full planning application for a new dwelling / annexe would be required - for something that is, ostensibly, not development (and also sought to answer on an assumption which was not integral to the pre-app request in any case).

The Officer confirmed that weight needed to be given to the Inspector's decision – yet chose *not* to give credence / weight to the Inspector's summary: *"I accept there is no reason in principle why such an area could not be considered part of the curtilage of a dwelling or within residential use".*

Nor was consideration given to evidence provided which demonstrated the use of the area identified as being residential use for well-in-excess of 10 years.

DEFINITION OF CURTILAGE

Aside from a few very specific circumstances there is no statutory definition of 'curtilage' defined by the TCPA; as such the base-line position is to revert to the dictionary definition; the Oxford Dictionary defines curtilage as:

noun: "A piece of ground lying immediately next to and belonging to a dwelling, typically a courtyard or garden with any outbuildings etc"

Combined with the dictionary definition, judicial precedent has been repeatedly required to assess key elements of what makes an area of land "curtilage", and what does not.

When considering the area of land at Mistletoe Cottage, the assessment of the following judicial precedent demonstrates that the area identified on appended plans is *undoubtedly* the curtilage of the dwelling;

Note that the following are the relevant 'landmark' cases that have influenced the curtilage issue over the years. It is worth however resting on the much more recent 'Blackbushe' and 'Hilley' Cases – which reference and compound the courts previous judgements.

The following cases are referenced in precis for absolute completeness;

SINCLAIR LOCKHART'S TRUSTEES

SINCLAIR LOCKHART'S TRUSTEES V CENTRAL LAND BOARD 1950

The Sinclair Lockhart's judgement helped define the term 'curtilage' in a legal context.

It defined that curtilage refers to the land or area immediately surrounding a house or building that is used for the comfortable enjoyment of that house or building. This can include uses and areas like gardens, driveways, and other areas that serve a necessary or useful purpose for the house or building.

The judgement clarified that this area can be considered part of the house or building, even if it is not physically marked off or enclosed.

At Mistletoe Cottage, the land in question is clearly private domestic garden featuring fruit trees, vegetable garden / planters (and prior to the application of 2021) a greenhouse, lawns and flower beds… all reasonable *and* useful to the enjoyment of the dwelling.

SUTCLIFFE

ATTORNEY GENERAL EX REL SUTCLIFFE V CALDERDALE MBC, 1982

In this case, LJ Stephenson was asked to determine whether a row of terraced cottages associated with a listed mill could be considered to be within its curtilage and therefore subject to the special protection listing affords.

LJ Stephenson outlined three criteria for assessing curtilage:

1) The physical layout [of the listed building and the structure]
2) The ownership, past and present
3) The use and function of the land, past and present

In this case (as can be shown in imagery and previous planning applications dating back to the 1970's (and substantially earlier) – all three of the now well established curtilage tests are passed in the Mistletoe Cottage scenario…

In the Mistletoe Cottage context:

Physical layout
The land at the property is clearly physically attached (as shown in appended photographs / plans)

Ownership
certainly since prior to 1971 the land has been in one ownership (a single title)

Function
As shown in images the modern curtilage (as asserted) has served the dwelling as a private garden (including a domestic orchard) since at least 1971 (certainly - by the LPA's own recognition - since 1999) and probably as far back as the 1800's. Indeed the curtilage has reduced since then - as the garden has been modified to suit the occupants of the dwelling over time.

DYER

DYER V DORSET CC, 1989

Heard by the Court of Appeal, this case dealt with the definition of curtilage in relation to a building.

In the case, Mr. Dyer owned a piece of land in a rural area. On this land, there were two buildings: a dwelling house and a barn. The barn had been converted into a dwelling without planning permission. The local planning authority took enforcement action, requiring the use of the barn as a dwelling to cease and the building to be restored to its former condition.

Mr. Dyer appealed this decision on the grounds that the barn was within the curtilage of his main dwelling, and therefore its conversion to a dwelling was permitted development under the Town and Country Planning General Development Order 1977, and did not require planning permission.

The court had to decide whether the barn fell within the curtilage of the dwelling house. In making this determination, the court considered several factors, such as the layout of the land, the amount of land, the nature of the uses, and the degree of integration between the two buildings.

The court held that the barn was not within the curtilage of the dwelling house. In making this decision, the court gave a broad definition of curtilage:

> *"a piece of ground attached to a dwellinghouse and forming one enclosure with it, therefore it must be small area, no larger than is required for the convenient enjoyment of the dwellinghouse."*

It emphasised that curtilage is a "small area" around a dwelling house that is integral to the convenient enjoyment of that house. The exact boundaries of a curtilage are fact-specific and must be determined in light of these factors.

Importantly the expression 'small' was not expressly defined. Later precedent and government guidance has demonstrated that the size is wholly relative to the circumstances.

MCALPINE

MCALPINE V SECRETARY OF STATE FOR THE ENVIRONMENT [1995]

In this case it was held that there *is* no rigid definition of curtilage, but that it needs to be in intimate association with the building and no physical enclosure is necessary to define it.

In this case, Alfred McAlpine Homes Ltd owned a property that consisted of a large manor house, gardens, and outbuildings. They sought to convert some of the outbuildings into separate dwelling houses. The local planning authority issued an enforcement notice, arguing that this constituted a change of use that required planning permission.

McAlpine appealed, contending that the outbuildings were within the curtilage of the manor house and therefore their conversion was permitted development and did not require planning permission.

The Court of Appeal found in favour of the local planning authority. It held that the outbuildings were not within the curtilage of the manor house, in part due to their physical separation from it and the nature of their use.

Significantly, the court gave further guidance on determining curtilage, noting that factors to consider include the physical layout of the main building and the outbuilding, their ownership and occupation, and their use or function, among other things. The court also confirmed that the curtilage of a building is an area of land around it which is intimately associated with the use of the building.

Together with Debenhams Plc v Westminster City Council [1987] these cases suggest the importance of a lasting relationship between the main dwelling and its associated structures or land. The more permanent and integral the enclosure is to the enjoyment of the property, the more likely it is to be considered part of the curtilage.

DEBENHAMS

DEBENHAMS PLC V WESTMINSTER CITY COUNCIL [1987]

Debenhams PLC sought to make alterations to a listed building, which were within an area that Westminster City Council argued formed part of the listed building's curtilage. If the Council was correct, the proposed works would have required listed building consent because they would affect the character of the listed building as a building of special architectural or historic interest.

Debenhams argued that the area where they intended to make the alterations did not fall within the curtilage of the listed building, and therefore they did not require listed building consent.

The Court held that the term "curtilage" has a broad and not a narrow meaning, but it doesn't necessarily include all the land within the same ownership.

To be within the curtilage of a building, an area of land must be intimately associated with the building in question.

The case is significant because it established the principle that the concept of curtilage does not merely refer to the land immediately adjacent to a building, but to an area around the building that is intimately associated with it.

CHALLINOR

CHALLINOR V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2009]

In this case, Mr. Challinor converted a barn situated on his land into a separate dwelling without obtaining planning permission. He argued that the barn was within the curtilage of his main dwelling and therefore, under the Town and Country Planning (General Permitted Development) Order 1995, the conversion did not require planning permission.

The local planning authority disagreed and served an enforcement notice requiring him to cease the use of the barn as a dwelling. Mr. Challinor appealed to the Planning Inspectorate, and then to the High Court when the Inspectorate found against him.

In the High Court, it was held that the barn ***was*** within the curtilage of the main dwelling, despite serving a function that was *not* ancillary to the enjoyment of the dwelling.

The judge stated that the interpretation of "curtilage" under the 1995 Order was broad and could include buildings which served non-ancillary functions.

This case is important because it expanded the scope of what can be considered within the curtilage of a dwelling, suggesting it could include structures that served functions not directly related to the enjoyment of the main dwelling.

BARNETT

BARNETT V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2008]

The Court was asked whether a planning permission granted permission for the use of a piece of land for purposes ancillary to a dwelling house, so that that land became part of the curtilage of the house, and permitted the construction of a tennis court and swimming pool. The defendant had had planning permission, but then had built property outside the lines of the original development. He appealed an enforcement notice saying that the plans should not have been taken into account.

Held: The rule that plans submitted with an application were not part of the permission granted applied only to outline permissions. On a full grant the plans supplied became incorporated within the permission. The curtilage defined in the plan still applied, and the defendant's appeal failed.

In the Mistletoe Cottage context:

This court position may have relevance to the previous 1997 planning position at the property – however without the application file being available this is not presently clear.

In the case of Mistletoe cottage however the s.171 / s.191 position essentially negates the previous position of the advertised 'approved' change of use – as this has been established over a considerable period time. The council should however take especially careful consideration of any archived planning history to the site – and should certainly release the files held (indeed should have done so at pre-app stage).

BURFORD

BURFORD V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT & ANOR [2017]

This case demonstrated that the concept of curtilage does not solely depend on land use.

However it also clarified that using land incidentally for the enjoyment of a dwelling house does not automatically make it a part of the dwelling's curtilage.

Even when the land shares common ownership with the dwelling and a Lawful Development Certificate exists to confirm the land's incidental use, the land may not be considered curtilage if it is not attached to the dwelling and does not form a single enclosure with it.

The courts had previously established that determining curtilage relies on three key criteria: physical layout, historical and current ownership, and past and present use or function.

However, these criteria's evaluation is subject to the decision maker's planning judgement and can only be challenged based on Wednesbury unreasonableness. Therefore, the decision maker has the discretion to determine the weightage of each factor.

Consequently, Justice Supperstone agreed with the Inspector's decision that the land in question was not curtilage despite common ownership with the dwelling and its certified use for purposes incidental to the dwelling's enjoyment.

In the Mistletoe Cottage context:

In the Oakcutts / Burford case the scenario explored by the courts was diametrically opposed to that of the Mistletoe Cottage situation – in that the curtilage development there was proposed on an area of land distinctly separate from the dwelling and not used for the day to day enjoyment of the dwelling.

In the Mistletoe cottage situation the land in question is directly connected, immediately associated with the dwelling, ring fenced and functionally associated with the dwelling and its enjoyment. There can be no doubt that in *this* instance the land forms a clear "intimate association" and is not remotely '*pushing the boundaries of reasonable interpretation*'.

Indeed the Wednesbury unreasonableness principals should be very carefully considered in this case - as to how the garden (site) could possibly be construed – by any reasonable person - as anything but the garden (curtilage) of the house.

BLACKBUSHE

BLACKBUSHE AIRPORT LIMITED V HAMPSHIRE COUNTY COUNCIL (2021)

"There are some words or expressions which are like an elephant; its essence is difficult to put into words, but you know it when you see it.

'Curtilage' is a word of that nature."

(Andrews LJ)

The Blackbushe case considered whether 115 acres of operational land at Blackbushe Airport, could be deregistered as a village green on the grounds that it is within the curtilage of a small terminal building at the

airport. The court disagreed with the airport's argument, stating that the large area of operational airfield could not correctly be described as “falling within the curtilage of the small terminal building”.

The court clarified that the correct question to ask is whether the land falls within the curtilage of the building, not whether the land and the building together fall within the curtilage of the airport. This means that there must be a sufficiently close relationship between the building and the land that the reference to the building could be naturally understood as including the land.

The judgement also emphasized that the extent of the curtilage of a building may vary with the nature and size of the building. While size is a relevant factor, it is not definitive as what falls within the curtilage of a manor house, a large industrial mill, or a factory and this may not be the same as what falls within the curtilage of a dwelling house…

The case also references numerous examples from past legal cases (above) to illustrate how the term "curtilage" has been applied in various contexts, underscoring that its interpretation is often case-specific.

Lastly, the judgment made clear that "curtilage" does not have a broader and more expansive definition for the purposes of listed buildings legislation; The test in a listed building case was determined not to be any different from other contexts (and vice a versa).

Finally, the judge confirmed that the curtilage of a building is a different concept from the ‘planning unit’ – per Burford.

HILEY

HILEY V SECRETARY OF STATE [2022]

The main issue in Hiley was determining whether a proposed workshop and storage building, to be built in a field, would be within the "curtilage" of adjacent business park buildings.

After initial dismissal by the Planning Inspector, and the Secretary of State's attempts to dismiss the case, the claimant and their counsel persevered. The case proceeded to a substantive hearing where Mr. Justice Julian Knowles overturned the Inspector's decision.

The judge considered that the Planning Inspector had erred in the assumption that a single enclosure equated to ‘intimate association’; and that ‘functional equivalence and interdependence’ are not criterion when considering the matter of curtilage.

In the case the question was whether a field and pond immediately adjacent to an industrial building were within its curtilage (and thus open to permitted development rights). The judgment ruled that they were part of the curtilage of the building and that the faulty Appeal Dismissal was quashed…

In the Mistletoe Cottage context:

Interestingly (despite the principals already being laid out in Blackbushe and preceding cases) this more recent judgement came about around 1 year after the most recent inspectors’ decision at Mistletoe Cottage – however it confirms our longstanding professional position; that a ‘use’ of land is not explicitly connected with its status as curtilage of a building (of any sort).

As such the whole garden at Mistletoe cottage is (and continues to be) the demonstrable curtilage in current parlance…

DETERMINING THE CURTILAGE (RESIDENTIAL USE) OF THE WHOLE GARDEN AT MISTLETOE COTTAGE

THE WEDNESBURY 'REASONABLENESS' APPROACH

Regrettably, the previous case officer's site analysis reveals a significant oversight: the failure to consider the enduring orchard as an integral component of the domestic garden associated with Mistletoe Cottage. While "the orchard" isn't specifically highlighted in two past planning applications (1988 and 1997) and the 1971 property conveyance, its location unequivocally falls within the bounds identified in those documents.

The presence and maintenance of the orchard for over 24 years are apparently undisputed (or undisputable), validated by aerial and terrestrial imagery from 1999 and onwards. This establishes the historical and functional relationship with the dwelling, reinforcing its inclusion as integral to the domestic curtilage.

There is another test that can be applied to aid consideration of 'curtilage';

When applying the principles elucidated in the Blackbushe judgement to Mistletoe Cottage, the definition of 'curtilage' holds constant for *all* properties, whether they are listed buildings or not. This uniform interpretation necessitates that any planning officer or inspector, when re-evaluating this case, must confront the following question with a sense of reasonableness: 'If Mistletoe Cottage were hypothetically a listed building, would a building operation at the location of the proposed hard standing necessitate the applicant to obtain listed building consent to undertake building operations within the curtilage of 'that' building?'

Central to this question is the understanding that any hypothetical building operation in the location of the proposed hard standing would, without a doubt, be deemed within 'listed curtilage'. Given the courts' clear position on the consistent application of the term 'curtilage' across both listed and non-listed buildings, the same interpretation must be applied here.

In view of the above, it becomes unequivocal that, guided by the Wednesbury reasonableness principle, any reasonable [planning] authority would agree that hypothetical building operations within the demarcated site boundary (as outlined in the attached site location plan) would require listed building consent in that scenario. Hence, it is incontrovertible that the entire site, as defined in this CoL application, must be recognised as falling within the established domestic curtilage of Mistletoe Cottage.

CONCLUSION

Upon thorough review of all the evidence, pertinent planning case law, and the observations from the appeal inspector, the character and status of the Mistletoe Cottage's site are indisputably clear: the entirety of the site serves as the residential curtilage of the property and therefore, is utilised for residential purposes.

The former case officer's acknowledgement of the existence of an orchard as far back as 1999 fortifies a broad and inclusive understanding of residential curtilage. This understanding extends beyond conventional garden spaces, encapsulating all land intimately associated with a dwelling house and used for the enjoyment and benefit of its inhabitants. Such a principle is deeply rooted in the ethos of planning case law, as confirmed in precedents such as McAlpine v Secretary of State for the Environment [1995] and Burford v Secretary of State for Communities and Local Government & Anor [2017].

Moreover, the appeal inspector's observations lend weight to this comprehensive understanding of residential curtilage. He conceded that a wooded area, such as the orchard, could indeed constitute part of the curtilage due to its residential function and connection with the dwelling house. His comments underscore that curtilage isn't confined to a fixed boundary, but rather pivots on the functional relationship and intimate association between the land and the dwelling house.

As such, the entire garden at Mistletoe Cottage, inclusive of the longstanding orchard, unarguably falls within the residential curtilage. This conclusion is firmly anchored in established legal principles and reflects the enduring link between the garden and the dwelling house—a connection that comfortably surpasses the 10-year benchmark suggested by the planning officer.

In conclusion, the garden of Mistletoe Cottage exemplifies residential curtilage. Its status is far from an abstract or elusive concept—it's as clear as recognising a distinct silhouette within a familiar landscape. Therefore, in a robust assertion that encapsulates the weight of evidence, the entire garden at Mistletoe Cottage, including the orchard, is confirmed as the property's residential curtilage. This fact must be maintained and respected in all future planning considerations for the site. Specifically, the proposed creation of a hardstanding and the siting of a caravan, both incidental and ancillary uses, fit comfortably within the recognised usage of this residential curtilage. Consequently, for the purposes of the Certificate of Lawfulness, this site is definitively residential curtilage and should be recognised as such.

We therefore, respectfully, request that the planning authority issue a certificate of lawfulness to confirm that:

1) That the identified land (site boundary) at Mistletoe cottage has been in use for domestic (private enjoyment) for a period in excess of 10 years and thus its 'lawful' use is established.

2) The proposed hard standing is situated within the established residential curtilage of the property and thus is permitted development per the GPD(E)O 2015 (as amended)

3) The siting of a "twin unit" caravan for incidental / ancillary purposes (within the planning unit) at Mistletoe cottage is a lawful use of land and does not constitute development per s.55 of the Town and Country Planning Act 1990.

While we consider that there is no need to adopt such an approach - the council is entitled to issue a split decision in determining this application.

Finally, if there is ANY further information required to demonstrate the lawfulness of the above points or if any clarification is required – please contact the undersigned who will be pleased to assist.

Yours sincerely,

Ian Firth BSc (Hons) MRICS MTCPA
Director

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APPENDIX 1

DEFINITION OF A CARAVAN

The Caravan Sites Act 1968 defines a [twin unit] caravan as:

Twin-unit caravans.

(1) ***A structure designed or adapted for human habitation*** *which—*

(a) is ***composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices****; and*

(b) ***is, when assembled, physically capable of being moved by road from one place to another*** *(whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.*

(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely—

(a) ***length (exclusive of any drawbar): 20 metres;***

(b) ***width: 6.8 metres;***

(c) ***overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 3.05 metres.***

(3) The Secretary of State may by order made by statutory instrument after consultation with such persons or bodies as appear to him to be concerned substitute for any figure mentioned in subsection (2) of this section such other figure as may be specified in the order.

(4) Any statutory instrument made by virtue of subsection (3) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

APPENDIX 2

CIRCUMSTANCES WHERE A CARAVAN SITE LICENSE IS NOT REQUIRED

See https://www.legislation.gov.uk/ukpga/Eliz2/8-9/62/schedule/FIRST/crossheading/use-within-curtilage-of-a-dwellinghouse

Use within curtilage of a dwellinghouse

1 *A site licence shall not be required for the use of land as a caravan site if the use is incidental to the enjoyment as such of a dwellinghouse within the curtilage of which the land is situated.*

APPENDIX 3

RELEVANT APPEAL DECISION (SITING A CARAVAN)

The following appeal decision is highly relevant in the consideration of the use of land for siting a caravan for incidental / ancillary purposes. (Appeal decision attached)

Appeal APP/X0415/X/15/3035764 – ALLOWED – Hawridge Common, Buckinghamshire

Principal matter considered: *The development for which a certificate of lawful use or development is sough is the proposed use of domestic curtilage for siting a [caravan] for uses incidental and ancillary to Mildmay Cottage (A Grade II Listed Dwellinghouse – proposed site within the front garden of the property – situated in an AONB and Conservation Area).*

The relevant and important conclusions made by the Inspector in that case were as follows;

1) Owing to the degree of permanence (i.e. the unit being a caravan and with no physical attachment to the ground), the proposal did not amount to a building operation per s.336 of the TCPA 1990;

2) No material change of use of the land would arise from the use of the unit in an incidental or ancillary capacity;

3) The siting of the unit did not require planning permission, and the use of the unit within the domestic curtilage at Mildmay Cottage was considered lawful.

These three principles are essentially the same as the proposal put forwards within this application. The proposed caravan will be a chattel - so an item of re-movable personal property; no material change of use will occur as the unit will be used in an ancillary capacity to the existing residential dwelling (Mistletoe Cottage); and there is no requirement for planning consent, as the unit will be sited within the domestic curtilage of Mistletoe Cottage.

APPENDIX 4

RELEVANT APPEAL DECISION (SITING A CARAVAN)

Hackness House Summary (Appeal ecision attached):

This document is an appeal decision regarding the proposal by Mr. Matthew Wall to install a static caravan at Hackness House in Highbridge, Somerset. The proposal was initially refused by the Sedgemoor District Council, which led Mr. Wall to file an appeal under section 195 of the Town and Country Planning Act 1990. This decision was made following a site visit on November 28, 2017, by Brian Cook, an inspector appointed by the Secretary of State for Communities and Local Government.

Mr. Wall's application had been rejected by the Sedgemoor District Council because they did not believe the location of the proposed caravan fell within the 'curtilage' of the dwellinghouse. The 'curtilage' refers to the immediate land or garden attached to a house, which is deemed to be part of the house. The Council believed that placing a caravan in this area would result in a material change in land use, thus requiring planning permission.

The appellant, however, disputed this claim and held that the proposal was merely an attempt to use the land (garden & parking) within the curtilage of the house to site a static caravan to provide ancillary accommodation for a family member (his son). He contended that the Council had misconstrued the Town and Country Planning Act.

Upon inspection, the inspector noted the considerable size of the land surrounding Hackness House, which included a large front and rear garden and an overgrown vegetable area, among other things. The inspector confirmed that the proposed caravan would be stationed on a hardstanding area near a greenhouse, which he agreed was outside the 'curtilage' of the dwelling.

Despite this agreement, the inspector deemed that the notion of 'curtilage' was irrelevant to the determination of the appeal. The primary issue, according to him, was whether the proposal would constitute a development that requires explicit or deemed planning permission.

After careful deliberation, the inspector concluded that the entirety of Mr. Wall's land, including the spot where the caravan was to be located, constituted a single planning unit for residential use. He believed that the siting of the caravan would not significantly change the use of the planning unit or lead to the creation of a new planning unit. Therefore, no material change of use would occur, negating the need for planning permission.

In light of these considerations, the inspector decided to allow the appeal and granted a certificate of lawful use or development.