



IHBC GUIDANCE NOTES

Advice Note on the Curtilage Rule – An interpretation of the Taunton Deane judgment

GN2019/2
v. March 2019

This is one of a series of occasional Advice Notes published by The Institute of Historic Building Conservation (IHBC). IHBC Advice Notes offer current and recent guidance into topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice. The Notes necessarily reflect knowledge and practice at the time they were developed, while the IHBC always welcomes new case examples, feedback and comment to research@ihbc.org.uk for future revisions and updates.

This note sets out the IHBC's advice on the interpretation of the High Court judgment in the Egerton v Taunton Deane case (also known as Jews Farm)¹, relating to the identification of freestanding objects and structures that constitute part of a listed building under the so-called 'curtilage rule'. The advice has particular relevance to listed farmhouses and associated farm buildings but has implications for other types of listed building. The advice note has been prepared by the IHBC Legal Panel, with advice from respected specialist lawyers, and has been adopted as the official advice of the Institute by the IHBC's Trustees.

Section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that:

"any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948...shall... be treated as part of the building."

"Curtilage" is not defined in the 1990 Act. As a result, the Courts have been called on a number of times to interpret whether a particular structure is in the curtilage of a building in the list ("the principal building") and so benefits from protection. What has emerged is a test based on three

criteria, formulated by the Court of Appeal in the Calderdale case as follows:

- 1) The physical layout of the principal building and the structure;
- 2) Their ownership, past and present; and
- 3) Their use or function, past and present.²

These criteria should be applied to the facts as they were at the date of listing.

As to the first, how closely related physically and geographically are the supposed curtilage structure and the principal building – the building in the list – bearing in mind that the curtilage can in some circumstances extend to buildings or structures that are some distance from the principal building?

As to the second, was the structure in the same (or linked) ownership as the principal listed building?

In relation to the third criterion, was the use of the structure related in some way to the use of the principal listed building? The House of Lords, in the Debenhams case³, subsequently emphasised that the use of the structure must be “ancillary” to the use of the principal building. And it gave the example of a stables of a mansion house, or the steading of a farmhouse.⁴

The uncertainty following from the Jews Farm case arose from the judge’s finding that the barn and the granary had always been used in conjunction with the farming activities carried on at the farm, and not for purposes that were ancillary to the use of a listed farmhouse as a dwellinghouse (for example, to garage the farmer’s car or to store his domestic items). In effect the court ruled that the third criterion (ancillary use) was not satisfied. The farmhouse was just that: a house. The other buildings were not ancillary to it. Therefore, they were not within the curtilage of the listed building.

However, the Jews Farm case is not determinative in all farm cases. In large part, the decision turned on its particular facts – notably that there was a substantial wall between the farmhouse and the two farm buildings. Other cases may well be decided differently. The nature of farmhouses can be different from regular houses and it will often be the case that individual circumstances cannot be easily categorised in a black and white way and will more likely be seen as shades of grey.

Historically, farmhouses were generally not only the residence of the farmer and his family, they commonly also functioned as the administrative unit of the agricultural enterprise concerned with the production of food from the

surrounding farmland. Traditional farmsteads mainly comprised the farmhouse and some or all of the working farm buildings and spaces often closely dependent on each other.⁵ Buildings would have accommodated several processes, activities or functions, such as storage and processing of crops and sheltering and management of farm animals, all relating to each other. Sometimes each function justified a separate building, sometimes several functions were accommodated under one roof; some farms also had isolated field barns or outfarms. Gardens usually developed as private areas with a distinct and separate character, screened from the working areas of the farm by hedges or walls.⁶ In particular, in freestanding farm groups located in the countryside, farmhouses provided 'round the clock' security and convenience, especially in relation to the management of livestock.

The distinction between domestic and non-domestic farm buildings is, therefore, not always cut and dried, particularly where the farmhouse and working buildings are attached or intimately related; in the Jews Farm case, the geographical relationship of the barn and the granary to the farm house (the first test) was also considered significant, particularly the existence of the wall separating them. As the judge put it, the farm house turned its back on the barn and the granary. If all three buildings had fronted onto a single courtyard, for example, the result might have been different. There will therefore often be cases where barns and other working buildings of a farmstead are geographically related to a farm house, and their use ancillary to its use, such that they will be found to be within its curtilage.

It should be noted that the decision in the Jews Farm case has not been reviewed by any higher courts to date.

Where it seems that a structure does not, or may not, enjoy protection by being within the curtilage of a listed building, consideration should be given to inviting Historic England, Cadw, Historic Environment Scotland or the Historic Environment Division, Northern Ireland to revise the list to include the structure in its own right or to show it within a demarcated curtilage.

Further Reading:

- a) Listed Buildings and Other Heritage Assets (5th edition): Mynors and Hewitson (which contains diagrams showing the facts in each of the cases mentioned)
- b) Historic England Advice Note 10: Listed Buildings and Curtilage
- c) Historic England: Agricultural Buildings – Selection Guide
- d) English Heritage and Countryside Agency: Historic Farm Buildings:

Constructing the Evidence Base

- e) Historic England: Farm Buildings and Traditional Farmsteads
- f) Historic England: Farmstead Assessment Framework

Endnotes

1. Subject to S.1 (5A) which provides for new list descriptions to identify objects or structures that are not to be treated as part of the listed building and to identify any part or feature of the building that is not of special architectural or historic interest.
2. Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC [1983] JPL 310.
3. House of Lords, Debenhams PLC v Westminster CC (1986)
4. The definition of a “steading” is “the outbuildings in contrast to the farmhouse”.
5. Historic Farm Buildings: Constructing the Evidence Base
6. Historic England: Farmstead Assessment Framework

February 2019