All England Reporter/2000/Secretary of State for the Environment, Transport and the Regions and another v Skerritts of Nottingham Ltd - [2000] All ER (D) 245

[**2000**] **All ER (D**) **245**

Secretary of State for the Environment, Transport and the Regions and another v Skerritts of Nottingham Ltd

Court of Appeal, Civil Division

Henry, Robert Walker LJJ and Alliott J

25 February 2000

Town and country planning – Enforcement notice – Validity – Curtilege of listed building – Alteration works to stable block near Grade II listed building – Whether stable block within curtilage of listed building – Whether curtilage of a listed building confined to small area surrounding it – Planning (Listed Buildings and Conservation Areas) Act 1990.*

Skerritts of Nottingham Ltd, the respondent, was the lessee of a Grade II* listed building. Skerrits sought to effect alterations to a former stable block 200m to the east of the building. The alterations involved the replacement of traditional timber windows with white plastic ones, which was done without listed building consent. The council issued a listed building enforcement notice under s 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring the removal of the unauthorised white plastic windows and the reinstatement of the traditional timber windows. The stable block was not listed in its own right, and accordingly the council's ability to issue an effective listed building enforcement notice in respect of the works to the building depended on it being within the curtilage of the Grade II* building. The appellant appealed against the notice on the grounds, inter alia, that the stable block fell outside the curtilage of the listed building. The inspector referred to Planning Policy Guidance (PPG 15) on the test to be applied as to whether a structure fell within the curtilage of a listed building, namely, the physical layout of the surroundings to the listed building and the relationship between the structures on the land; ownership past and present; whether the structure formed part of the land; the use or function of the structure; and whether the structure was ancillary to the principal building. On that basis he decided that the stable block lay within the curtilage of the listed building. The appellant's appeal against that decision was dismissed by the Secretary of State. The appellant appealed further arguing that an error of law had been made by the inspector and the Secretary of State because regard had not been paid to the principle derived from the authorities, that the curtilage of a listed building was confined to a small area about the building and that PPG 15 was incomplete in failing to mention that principle. The appeal was allowed. The Secretary of State appealed.

The appeal would be allowed.

In the context of Pt 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the curtilage of a substantial listed building was likely to extend to what were or had been, in the terms of ownership and function, ancillary buildings. Of course, 'physical layout' came into the matter as well. In the nature of things, the curtilage within which a mansion's satellite building were found was bound to be relatively limited, but the concept of smallness was in that context so completely relative as to be almost meaningless and unhelpful as a criterion. It followed that the inspector and Secretary of State had not erred in law, and PPG 15 was not incomplete, in making no reference to smallness.

Debenhams plc v Westminster CC [1987] 1 All ER 51, *Metheun-Campbell v Walters* [1979] 1 All ER 606, *A-G (ex rel Sutcliffe) v Calderdale BC* (1982) P & CR 399, *Dyer v Dorset CC* [1989] 1 QB 346 and *McAlpine v Secretary of State for the Environment* [1995] 1 PLR 16 considered.

Decision of George Bartlett QC [1999] All ER (D) 306 overturned.

John Hobson (instructed by the Treasury Solicitor) for the Secretary of State.

Christopher Katkowski (instructed by Actons, Nottingham) for the respondent.

Dilys Tausz Barrister.

Judgment

COURT OF APPEAL, CIVIL DIVISION

25 FEBRUARY 2000

LORD JUSTICE HENRY

LORD JUSTICE ROBERT WALKER

and

MR JUSTICE ALLIOTT

JUDGMENT: Approved by the Court for handing down (subject to editorial corrections)

Lord Justice Robert Walker:

Introductory

This is an appeal with the leave of the judge from an order made on 22 March 1999 by Mr George Bartlett QC, sitting as a deputy judge of the High Court. By his order the judge remitted to the Secretary of State of the Environment, Transport and the Regions (the Secretary of State) for rehearing and determination the Secretary of State's decision (contained in a decision letter dated 26 May 1998) to dismiss an appeal against a listed building enforcement notice issued by Harrow London Borough Council on 2 September 1996.

The listed building enforcement notice was issued, as appears from its first schedule (description, address and location of buildings) in respect of

> “The stable block lying within the curtilage of the Grade II* listed Grimsdyke Hotel, Old Redding, Harrow Weald, shown edged with a bold black line on the attached plan.”

The contravention alleged was the removal of the existing timber-framed windows and the installation of white plastic double-glazed windows, without listed building consent. The notice required 19 unauthorised windows to be removed and windows of the traditional type to be reinstated within six months.

This appeal turns on the meaning of the word 'curtilage' and the evaluation of the facts made by the Inspector appointed by the Secretary of State. Before any more detailed description of the property now known as the Grimsdyke Hotel (and before that simply Grimsdyke) it is useful to summarize the statutory provisions which apply. They are in Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

> Section 1(5) of the Act contains an important definition of "listed building":
>
> "a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act -
>
> (a) any object or structure fixed to the building;
>
> (b) 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."

Section 7 contains a general prohibition on the unauthorised carrying out of any works to a listed building which would affect its character as a building of special architectural or historic interest (which is, under s. 1(1), the criterion for listing). By section 9(1) a contravention of s.7 is an offence. Section 38 empowers the local planning authority to issue a listed building enforcement notice requiring the restoration to its former state of a building on which works have been carried out in contravention of s.9(1).

By section 39(1) a person with an interest in a building to which a listed building enforcement notice relates may appeal to the Secretary of State on one or more of the specified grounds, which include (s.39(1)(a)) that the building is not of special architectural or historic interest. There are numerous other grounds in paragraphs (b) to (k). By s.65 there is an appeal from the Secretary of State to the High Court on a point of law.

At all material times the lessee of the Grimsdyke Hotel, its garden and grounds, and the stable block, has been a company called Skerritts of Nottingham Ltd (Skerritts). Skerritts appealed to the Secretary of State on several grounds, but only the ground in s.39(1)(a) (which raised the 'curtilage' issue) is relevant to this appeal. The appeal was dealt with by written representations to the Inspector, together with a site visit which he made on 16 February 1998. The Inspector's report dated 5 March 1998 advised that the appeal should be dismissed on all the grounds relied on by Skerritts, but that the time for compliance should be extended to nine months. The Secretary of State by his decision letter dated 26 May 1998 accepted the Inspector's advice and reasoning (both on the 'curtilage' issue and on the other grounds of appeal) and dismissed Skerritts' appeal. Skerritts appealed on a point of law (relying only on s.39(1)(a)) and the judge, in a careful reserved judgment, allowed the appeal. Against that decision the Secretary of State appeals to this court. The notice of appeal has been served on the local planning authority, the Harrow London Borough Council, but it has taken no part in this appeal (nor did it take part in the appeal to the judge).

The main building known as Grimsdyke was designed as an English country house by (Richard) Norman Shaw, the eminent Victorian architect. It was for many years the home of W S Gilbert (and later of his widow). It has not been used as a private house since 1937 and its use as a hotel began in 1975.

The Inspector's description of Grimsdyke and its surroundings is set out in the judgment under appeal, but it is useful to repeat it:

> "4. ...The hotel stands in a clearing in dense woodland and is set in extensive grounds. To the north of the grounds, there is open farmland and, to the east and south, Harrow Weald Common, a woodland and public open space. There is a water treatment compound set in woodland to the west. The site lies within the Metropolitan Green Belt.

> 5. The hotel is approached from Old Redding, via a gated entrance, past the South Lodge, a Grade II listed building, and along a metalled road through the wooded grounds. The road forks and the left-hand route continues to a parking area and the entrance to the hotel and the right-hand track swings east to a group of buildings including North Lodge, New Lodge and the Stable Block. Grim's Ditch is an ancient linear defensive earthwork which runs east/west to the north of the main hotel building. It is a Scheduled Ancient Monument. Grim's Dyke Lodge, to the north of Grim's Ditch, is a modem annex to the hotel containing 34 bedrooms.
>
> 6. Grimsdyke is a two and three storey, former English country house, designed by the architect Norman Shaw for the painter Frederick Goodall (1822-1904) and was later the home of W S Gilbert, the librettist (1837-1911). It is in a romantic, 'Old English', picturesque style and has an irregular plan and was completed in 1872. The landscaped grounds, which were laid out prior to the erection of Grimsdyke, have recently been included in the Register of Parks and Gardens of Special Historic Interest.
>
> 7. The Stable Block is some 200m to the east of Grimsdyke. It is L-shaped in plan, with a two storey wing and a single storey wing, and two brick walls complete a square compound in front of it. The approach is along the diagonal to the square from an entrance gate, which is missing, to the main entrance to the building at its inside corner. [Some detailed references to elevations are omitted here.] The accommodation is on two floors and provides bedrooms and communal kitchens and bathrooms for hotel staff. There are also some offices. The building has three tall brick chimneys, a tiled hipped and gabled roof with hipped and gabled dormers, and brick walls with vertical tiling to the upper parts."

I emphasise, at the risk of stating the obvious, that Grimsdyke itself is listed Grade II* and South Lodge is listed Grade II, but the stable block, although (as the Inspector found) "probably erected at the time that Grimsdyke was conceived by Shaw" and "almost certainly designed by Norman Shaw" is not separately listed, which is why the issue of curtilage is of central importance. The South Lodge, which is separately listed, appears from the plans to be (in comparison with the stable block) at least twice as far from Grimsdyke.

In paragraph 11 of his report the Inspector referred to Planning Policy Guidance 15 (PPG 15) for the tests, derived from case law, for whether a structure is within the curtilage of a listed building: physical layout of the surroundings to the listed building and the relationship between the structures on the land; ownership past and present; whether the structure forms part of the land; and the use or function of the structure and whether the structure is ancillary to the principal building. The Inspector considered those matters in the next five paragraphs and concluded in paragraph 17,

> "I have reached the conclusion that, based on the physical, historical, ownership, and functional facts before me, the structure known as the Stable Block lies within the curtilage of Grimsdyke and has formed part of the land since before 1948 and so shall be treated as part of Grimsdyke. The appeal under ground (a) should not succeed."

It is not necessary to go into all those aspects since the appeal heard by the deputy judge, and the further appeal to this court, have been concerned with a single fairly narrow point (though one trammeled by a good deal of case law). That is whether the Secretary of State, in accepting the Inspector's advice and reasoning, erred in law by overlooking the principle (if there is such a principle) that the curtilage of a listed building is confined to a small area around the building, and that PPG 15 is incomplete in failing to mention this principle.

The deputy judge accepted the submission of Mr Christopher Katkowski (who appeared below, as in this court, for Skerritts) that there was an error of law on that point. He based his conclusion principally on the decision of this court in *Dyer v Dorset County Council* [1989] 1 QB 346. He found the force of that case to be,

> "so clear that it will amount to an error of law to determine whether a structure separated by some distance from the listed building is within the curtilage of the building without having regard to the concept of curtilage as a small area about a building. Considerations of function, history, ownership and physical layout are all material and may in most cases be determinative of the question, but, unless the decision-maker also bears in mind the essential concept of size, in cases of substantial physical separation he may come to a wrong conclusion. Of course what is small will inevitably vary greatly according to the circumstances and to say that a curtilage is a small area is obviously not to provide any precise test of identification. But to bear in mind the concept of size will prevent the decision-maker, relying on the other considerations correctly spelt out in PPG15, from extending too far the area he defines as the curtilage."

Mr John Hobson (appearing in this court, as below, for the Secretary of State) has challenged that conclusion, drawing attention to two authorities which were not cited or considered in *Dyer.* Mr Katkowski has contended that the deputy judge's decision was right, and for the right reasons.

Although *Dyer* is the most important authority it is best to take the case law in chronological order. *Methuen-Campbell v Walters* [1979] 1 QB 525 was concerned with the meaning of "appurtenances" in the Leasehold Reform Act 1967, and so gives only limited assistance, especially as the Court of Appeal took into account the dispropriatory effect of that Act. It gives Mr Katkowski some slight assistance in that the court considered that the meaning of appurtenances was restricted in that it included nothing beyond the curtilage of the house. That case concerned a fenced paddock of 1.6 acres which lay beyond and below the garden of the house which the tenant wished to acquire. Goff LJ (at p.538) treated it as a question of fact and decided that question against the tenant. Roskill LJ (at p.541) treated it as a mixed question of fact and law and agreed in the result. So did Buckley LJ, who said (at pp.543-4),

> "In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole."

The decision of this court in *A-G (on the relation of Sutcliffe) v Calderdale BC* (1982) 46 P&CR 399 was concerned with listed buildings, s.54(9) of the Town and Country Planning Act 1971 being in virtually the same terms as s. 1(5) of the Act now in force. The issue was whether the listing of a large five-storey mill building at Hebden Bridge extended to a crescent-shaped terrace of fifteen cottages (of two storeys at the front, but four storeys at the rear) linked to the mill by a stone and brick bridge. This court held that the cottages were within the curtilage of the mill. Stephenson LJ (with whom Ackner LJ and Sir Sebag Shaw agreed) identified three relevant factors in determining whether a structure was within the curtilage of an existing building (at p.407),

> "(1) the physical 'layout' of the listed building and the structure, (2) their ownership, past and present, (3) their use or function past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage."

Stephenson LJ quoted from Buckley LJ's judgment in *Methuen-Campbell* but focused on Buckley LJ's reference to an “integral whole” rather than his reference to “small pieces of land”.

The next case, *Debenhams v Westminster City Council* [1987] AC 396, was also concerned with the definition in s.54(9) of the Town and Country Planning Act 1971, but in the context of the exemption from rates of an unoccupied listed building. Hamley's toy shop in Regent Street was a listed building but in the valuation list it was listed with further premises on the other side of Kingly Street, connected by a tunnel and a footbridge (both of which ceased to exist in 1983 as a result of building operations). The case turned more on the meaning of the word 'structure' than on 'curtilage' but *Calderdale* was considered. Lord Keith (with whose speech the majority of their lordships agreed) thought that *Calderdale* could be supported, in relation to a structure which was a separate building, only if the separate building was ancillary to the listed building. He said [1987] AC 396, 403,

> “All these considerations, and the general tenor of the second sentence of section 54(9) satisfy me that the word “structure” is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage. In my opinion the concept envisaged is that of principal and accessory. It does not follow that I would overrule the decision in the *Calderdale* case, though I would not accept the width of the reasoning of Stephenson LJ. There was, in my opinion, room for the view that the terrace of cottages was ancillary to the mill.”

He did not criticise Stephenson LJ's view that an ancillary building might be within a main building's curtilage even though some way from it.

Neither *Calderdale* nor *Debenhams* was cited in *Dyer v Dorset County Council* [1989] 1 QB 346. It was not a case about listed buildings but about a tenant's right under the Housing Act 1980 to buy his house from a landlord which was a local authority. Mr Dyer, the tenant, was a senior lecturer in animal husbandry at an agricultural college owned by the local authority, his employer. The relevant statutory provision was para 1 in Schedule 1 to that Act, the effect of which was summarized as follows by Lord Donaldson MR (at pp.354-5),

> “Mr Dyer therefore has a right to buy his house unless that house is within the curtilage of a building which is held by the council mainly for purposes other than housing purposes and consisting of accommodation other than housing accommodation.”

The issue came down to whether Mr Dyer's rented house was within the curtilage of one or more of the buildings comprised in the agricultural college. The Master of the Rolls described those buildings in these terms (at p.355):

> “There are a number of buildings clustered around and to the east of Kingston Maurward House, the great house of the old estate and the headquarters of the college. To the west lies the principal's house and six staff houses, all within 200 to 400 yards of Kingston Maurward House. A little further to the west there is Stinsford Dairy, which was one of Mr Dyer's principal responsibilities. The four lecturers' houses are about 450 yards to the north-west of Kingston Maurward House, forming an isolated close. The remainder of the estate is not built on and consists of a driveway from the public road fronting the lecturers' houses to Kingston Maurward House and fenced fields.”

The county court judge had decided against the tenant, understanding &curtilage' as limited to the immediate area surrounding a building. This court upheld his decision. The Master of the Rolls (at p.357) regarded the expression as always involving “some small but necessary extension to that to which the word is attached”. He would have reached a different view if he had had to construe the words 'curtilage of the college'. Nourse LJ agreed, treating curtilage as having a diminutive suffix. He and Mann LJ, who also agreed, regarded the

expression as a term of art (or as Nourse LJ said, 'the next best thing'). All three members of the court regarded the issue as one of fact and degree, and all three appear to have been influenced by the approach to dispropriatory legislation taken by this court in *Methuen-Campbell.*

In my view the decision in *Dyer* was plainly correct. As Nourse LJ said (at p.358),

> “While making every allowance for the fact that the size of a curtilage may vary somewhat with the size of the house or building, I am in no doubt that the 100 acre park on the edge of which Mr Dyer's house now stands cannot possibly be said to form part and parcel of Kingston Maurward House, far less of any of the other college buildings. Indeed, a park of this size is altogether in excess of anything which could properly be described as the curtilage of a mansion house, an area which no conveyancer would extend beyond that occupied by the house, the stables and other buildings, the gardens and the rough grass up to the ha-ha, if there was one.”

But in my respectful view this court went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression. No piece of land can ever be within the curtilage of more than one building, and if houses are built to a density of twenty or more to an acre the curtilage of each will obviously be extremely restricted. But Nourse LJ recognised that in the case of what the now-moribund Settled Land Act 1925 refers to as a 'principal mansion house' - which is what Grimsdyke was built as -the stables and other outbuildings are likely to be included within its curtilage.

I also respectfully doubt whether the expression 'curtilage' can usefully be called a term of art. That phrase describes an expression which is used by persons skilled in some particular profession, art or science, and which the practitioners clearly understand even if the uninitiated do not. This case demonstrates that not even lawyers can have a precise idea of what 'curtilage' means. It is, as this court said in *Dyer,* a question of fact and degree.

In my judgment the deputy judge was mistaken in treating *Dyer* as having such clear force as he thought it had. Not only was it concerned with dispropriatory legislation, but *Calderdale* and *Debenhams* were not cited, and the court's observations about smallness were not, on the facts of *Dyer,* necessary to the decision. 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 *Calderdale* (at p.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.

It follows that in my judgment the Inspector and the Secretary of State did not err in law (and PPG 15 is not incomplete) in making no reference to smallness. Despite Mr Katkowski's admirably clear and concise submissions I would allow this appeal.

Mr Justice Alliott:

I agree.

Lord Justice Henry:

I also agree.