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Our ref: BUR12/1 (MM/HL/AK)
Your ref: 26/11466/F

13 May 2026

BY EMAIL ONLY: development.management@bristol.gov.uk
cc: Tim.OGara@bristol.gov.uk; nancy.rollason@bristol.gov.uk
Dawn.Bodill@bristol.gov.uk

Dear Bristol City Council,

RE: (1) Planning application 26/11466/F: Works to install 8no. CCTV poles and cameras at Stoke Lodge Sports Ground, Shirehampton Road, Sea Mills, Bristol
(2) Extent of curtilage of Stoke Lodge

We act on behalf of [redacted] of "We Love Stoke Lodge" and write in relation to the above planning application for works to install 8 CCTV poles and cameras, to which our client **objects**.

We enclose with this letter (as **Annex 1**) Josef Cannon KC's opinion on whether Stoke Lodge Playing Fields ("**the playing fields**") and their outer boundary walls ("**the boundary walls**") fall within the curtilage of Stoke Lodge.

Since 2018, when Bristol City Council ("**BCC**") obtained the advice of barrister Matt Lewin, BCC's position has been that the playing fields and boundary walls do not form part of the curtilage. BCC has not reviewed its position since 2018, and has indicated in a recent email to our clients (of 27.3.26) that its position remains unchanged.

Josef Cannon KC's view in the enclosed opinion is that this is not the right approach for BCC to take. Leading Counsel concludes that "it would be most unwise to rely on Mr. Lewin's 2018 advice" (para. 45) and that "it would likely be incumbent on the Council – and would certainly be prudent – to revisit their view on the question of curtilage" (para. 48).

This is for two primary reasons. Firstly, the factual basis for Matt Lewin's advice has been shown to be inaccurate (see the points outlined at para 43(b)-(i) of the enclosed opinion). Indeed, the Council's understanding of the factual and historical position, as set out in its recent submissions to the Planning Inspectorate, contradicts points on which Matt Lewin relied in reaching his opinion. A review ought to be undertaken based on a comprehensive understanding of the site and its history, including a comprehensive understanding of the facts on the ground informed by a site visit. Secondly, since Matt Lewin's opinion in 2018, the Court of Appeal has handed down the leading judgment on the proper approach to curtilage: *R (Hampshire County Council) v Blackbushe Airport Limited and Ors* [2021 EWCA Civ 398]. This judgment reviews the previous authorities and provides an authoritative statement of the law on determining the extent of curtilage. Matt Lewin's advice pre-dated *Blackbushe* and did not consider and follow the approach set out in that judgment, and therefore can likely no longer be relied on. Taken together with the incorrect factual basis on which the opinion relies, it would not be proper for the Council to continue to rely on it.

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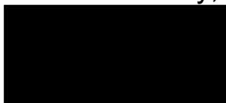
Josef Cannon KC further concludes that although it is not for a lawyer to form an opinion on the curtilage of Stoke Lodge in the first instance (which is ultimately a matter for planning judgment informed by an understanding of the site), based on all the factors that are now relevant, a reasonable decision-maker could well conclude that the curtilage of Stoke Lodge extends to the whole of the playing fields and boundary walls.

The question of curtilage affects BCC's determination of the heritage impact of the present application. Accordingly, should BCC fail to revisit its view, it risks a flawed assessment of the heritage impact (particularly considering this was one of the bases on which PINS refused the previous application). Given Leading Counsel's advice, we consider it necessary for BCC to conduct an updated assessment to accord with its general duty with respect to listed buildings under s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. A failure to do so may lead to a failure to appreciate the heritage import of the site and may constitute grounds for a judicial review claim.

Therefore, we invite BCC to revisit its view of whether the playing fields and the boundary walls are curtilage of Stoke Lodge. Such a view should be informed by *Blackbushe* and by a comprehensive assessment of the site's history and features on the ground.

This letter and the enclosed opinion are without prejudice to other substantive objections that our client may raise, but we are currently instructed on a limited basis to write only in relation to the issue of curtilage.

Yours faithfully,



RICHARD BUXTON SOLICITORS

Enclosure: Annex 1: Opinion of Josef Cannon KC

ANNEX 1:

Opinion of Josef Cannon KC dated 12 May 2026

STOKE LODGE PLAYING FIELDS, BRISTOL; PLANNING (LISTED BUILDINGS) ACT 1990; CURTILAGE

ADVICE

1. I am asked to advise Emma Burgess in respect of a Grade II listed building known as Stoke Lodge, in Bristol, and in particular how to address the question of its curtilage.

SUMMARY OF ADVICE

2. The question of the extent of the curtilage to Stoke Lodge is a matter of fact and degree, rather than one of law.

3. The correct approach to this question was definitively addressed by the Court of Appeal in 2021. Bristol City Council have not carried out an assessment of the curtilage to Stoke Lodge in light of that decision, and ought to do so now.

4. It previously sought the advice of a barrister, Matt Lewin. Mr. Lewin produced his advice in 2018, prior to the Court of Appeal's decision mentioned above. That advice is unlikely to be reliable now (and, at the very least, ought to be revisited in light of the leading case).

5. Further, some of the factual basis upon which Mr. Lewin advised in 2018 could be criticised as being inaccurate; again, this would support a case that the Council should revisit its assessment of the extent of curtilage.

6. Without trespassing too far into the realms of planning judgment, in my view it is certainly possible that a rational judgment could conclude that the wider open space around Stoke Lodge is all within its curtilage. I do not express a definitive view on that question, which is better done by an expert with the benefit of a site visit and armed with the full history of the site.

BACKGROUND

7. Stoke Lodge is a Grade II listed building in Bristol. It was built in 1836, and its first inhabitant was the merchant Thomas Bowman. It was listed in June 1994. The listing records that it was altered in 1889, and is a house in the Tudor Revival style. The grounds are not mentioned in the listing. There is a walled garden (which appears to be agreed to be within the curtilage, and the walls of which are thus

curtilage-listed) and some other outbuildings near to the house (to which the same applies).

8. A Heritage Statement dated 15 October 2025 by AH Heritage Planning says (at 4.5) that Stoke Lodge "*stands in landscaped grounds and whilst it now serves as a college, part of Bristol City Council's Adult Learning Service, it continues to read as a high-status early Victorian suburban villa*." In terms of its setting, that Statement says (at 4.14): "*Stoke Lodge sits within mature landscaped grounds, with large trees, lawns and an approach drive that reinforce its historic character as a 19th century villa set in a designed garden landscape. The sense of a country house villa in a parkland setting remains legible despite later adaptations for institutional and educational use. This relationship between house and grounds enhances the appreciation of its architectural form and its intended picturesque quality*."

9. I am told that the land around Stoke Lodge "*was historically the parkland of the listed building*." The same observation was made in a (later withdrawn and revised) Recommendation document prepared by Bristol City Council in November 2025, in connection with an application to place CCTV towers around the perimeter of the site. It does not appear to be a controversial proposition.

10. That same document notes that on the 1841 Tithe Map (published shortly after the house was built) Stoke Lodge itself and four surrounding parcels of land (denoted 636, 637, 638 and 640) were in common ownership. Those four parcels essentially comprise (with one exception, which was later incorporated) what are now the playing fields surrounding Stoke Lodge. At 2.15 it is said that while one cannot discern any landscaping from that Tithe Map, "*it should be assumed that at least some landscaping had been undertaken to match the status of the house. That the house is set back from the highway also suggests a deliberate intention to provide a secluded setting proper for a high status house*."

11. At 2.16 it goes on to say the following:

    "*What the Tithe map does provide…is a clearly defined package of land around the building in a single ownership and occupation, and tentatively defined here as a small parkland*."

12. At 2.18 the report notes that by the 1884 OS first edition, the parkland setting of the house "*is shown already as mature. The identification of individual trees and their distribution in the park show how the picturesque landscape gardening principles of Repton and the like had been brought to bear on a relatively small area. As was completely normal with landscaped parklands of every size was its separation into several different paddocks, to help in their management and that of livestock used to graze the lawns*."

13. At 2.19 it notes:

 “ *The 1884 Ordnance Survey map also shows that the northern section of the parkland between the walled garden and Ebenezer Lane had been added to the park by this date*[1], *its earlier boundaries erased, and a driveway constructed across it from a new entrance lodge. This expansion may already have been part of the 33 acres purchased by the Pope family in 1849. The Lodge survives and the “cottage-orne” style of the building suggests a date in the mid-19th Century, possibly when the Pope family purchased the house in 1849, but certainly by 1861. As designed features they have evidential value in illustrating how the parkland evolved to encompass the entire plot*.”

14. At 2.20 the report notes the “ *remaining curtilage-listed boundary wall around the parkland, against the road*” as giving “ *a hard defined perimeter to most of the grounds, making a clear statement of ownership whilst permitting views across the private parkland*.” So far as I understand it, this wall forms a single continuous boundary wall from the gate piers at the main entrance to Stoke Lodge from Shirehampton Road, and enclosing the surrounding open space on three sides, the fourth side (I think the north-western side) being bound by trees, rather than a perimeter wall.

15. The report goes on to note that in 1947 the local authority purchased Stoke Lodge together with the c.22 acres of surrounding land (i.e., that enclosed by the boundary wall), and the grounds became publicly accessible, and “ *although recreational use had begun long before, it was in Council ownership that they became dedicated sports and recreation fields*.” It notes that the Council designated the parkland as Important Open Space in 1994.

16. I note that the report supporting the Recommendation was not directly concerned with the question of curtilage, and perhaps focused more on the setting of Stoke Lodge, and/or the extent to which the surrounding land was, of itself, a heritage asset. Nonetheless, as a factual summary of the history of the building and surrounding land, it is most useful.

17. Further, while it was later withdrawn and an amended version of the Recommendation published, much of the above narrative is retained.

18. In 2011 Bristol City Council entered into a 125 year lease with Cotham School under which an interest in the playing fields which surround Stoke Lodge (but not Stoke Lodge itself) was transferred, subject to existing use rights (specifically including use by the community). Cotham School use the playing fields in conjunction with their activities as a school, principally for sport and recreation.

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[1] The further parcel of land referred to at §10 above

19. In 2018 there was an exchange of correspondence about the extent of the curtilage. The Local Planning Authority, Bristol City Council, initially took the view (expressed without reservation in a letter to Cotham School's headteacher dated 13 July 2018) that the playing fields were within the curtilage of Stoke Lodge, meaning that any attempt to erect a perimeter fence (as was then proposed) would require planning permission. It is clear that the basis for that position was the advice from the Council's own Historic Environment team[2]. That view was challenged by Cotham School, who were seeking to erect the perimeter fence, and who sent in representations drafted by their planning consultants on the issue. Those representations appear then to have been passed to the Council's legal team, and the Council ultimately obtained advice from counsel, Matt Lewin. I have seen that advice. It appears that his advice chimed with the view taken, apparently based on the information provided by Cotham School, by the Council's in-house lawyers, and the Council's formal position as to curtilage changed. The fence was erected under permitted development rights (which depended on the question of the extent of curtilage, i.e., the permitted development right relied upon did not arise if the perimeter fence was within the curtilage of a listed building).

20. In 2025 the school applied for planning permission to erect eight CCTV camera towers around the perimeter, each proposed to be 6m high. The application was made direct to PINS under s.62A TCPA. It was in this context that the Recommendation report quoted from above was produced and published; and then withdrawn and revised, although the recommendation itself remained the same. Importantly, the question of the extent of curtilage was not central to the 2025 planning application for CCTV towers. Planning permission was refused by an Inspector on 9 January 2026. I have read the decision. It is not primarily concerned with the extent of curtilage, but the decision makes some relevant observations, including:

    a. That Stoke Lodge, when built, was "*intended to give the impression of a baronial hunting lodge, set among a substantial package of land used by the owners. As such, the building was closely associated with its landscape setting*." (§8)
    b. "*The tree belts surrounding Stoke Lodge have provided physical separation between the building and the playing fields…*" (§9)
    c. "*..the nature of the surrounding trees..contribute to the appreciation of the planned parkland setting evidenced on historic maps*." (§10)
    d. "*..Despite the absence of a current functional connection, the playing fields therefore have a visual as well as a historic connection to Stoke Lodge and, despite*

[2] See, for example, the timeline set out in the letter dated 16 January 2019 from Gary Collins of the Council to We Love Stoke Lodge

not forming part of the curtilage of the listed building, I find they are a positive and important element in its setting and how its significance is appreciated." (§10)

e. The conclusion that the playing fields are "*historic parkland*" is "*compelling*". (§11)

21. The Inspector considered that the proposal to erect the CCTV camera towers would cause less than substantial harm in heritage terms and that was not outweighed by the public benefits put forward. Permission was refused.

22. On 27 March 2026 the Council wrote to confirm that their view as to curtilage remained as in 2018: that the playing fields did not form part of the curtilage of Stoke Lodge.

ANALYSIS

23. Much time could be spent analysing in detail the various exchanges, and whether the Council's changes of position are or were appropriate, but what really matters is the true extent of the curtilage of Stoke Lodge. This is because s.1(5) of the Planning (Listed Buildings) Act 1990 defines a listed building as follows:

(5) In this Act ***"listed building"*** means 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 July 1, 1948, shall, subject to subsection (5A)(a), be treated as part of the building.
(5A) In a list compiled or approved under this section, an entry for a building situated in England may provide-
(a) that an object or structure mentioned in subsection (5)(a) or (b) is not to be treated as part of the building for the purposes of this Act;
(b) that any part or feature of the building is not of special architectural or historic interest.

24. The listing for Stoke Lodge only mentions the house itself. As such, in order to determine what other objects or structures might *also* be listed, despite not being mentioned, one has to ask whether the object or structure concerned, so long as it has been there since July 1, 1948, is "*within the curtilage of the building*". In turn that requires an understanding of the extent of the curtilage.

25. I pause to say that this is the correct way to approach such questions: what is the extent of the curtilage? And once that is established, to determine which objects or structures within that curtilage might qualify as 'curtilage-listed' because they fall within s.1(5)(b). It would not be correct to start, for example, with the perimeter wall (although that there is a perimeter wall at all is, obviously, highly relevant).

26. Since Matt Lewin produced his advice in 2018, the Court of Appeal has revisited the authorities on how a curtilage might be defined, and ruled definitively. As such, R (Hampshire County Council) v Blackbushe Airport Limited and Ors [2021 EWCA Civ 398 is the leading case on the proper approach to curtilage. In brief the Court of Appeal confirmed that the question is a matter of fact and degree, and the proper approach is that described in the previous case of Methuen-Campbell v Walters [1979] QB 525, i.e. was the land so intimately associated with the building to lead to the reasonable conclusion that **the land was part and parcel of the building**?

27. Given that since Matt Lewin published his advice, there has been a definitive Court of Appeal ruling on the correct approach to the central question, it is surprising that the Council has said it will not review its position or seek a revised (or updated) opinion.

28. The judgment of the Court of Appeal is illuminating, and I set out some of the key passages before seeking to analyse how applying the test to the land in question here might determine the extent of the curtilage.

29. However, a key preliminary point is that the extent of curtilage is a matter of fact and degree, to be judged on the individual facts of a case; and is a matter of planning judgment (as Mr. Lewin notes in his advice, at paragraph 15(c)). That means it is not (at least uniquely) a question of law. What must be done is an analysis of the position on the particular facts, in light of the law.

30. In that context, and in terms of the approach, Mr. Lewin's advice from 2018 is entirely appropriate in its time, as legal advice on how (then) to approach the question of curtilage. He acknowledges in terms that the question is ultimately one of fact and degree. In my view what is implicit in Mr. Lewin's advice is that it is his assessment of how a court might determine the question, rather than seeking to determine it himself (which would be surprising for a barrister to attempt to do, particularly given his accurate note that the question turns on planning judgment: see §15(c)). I also note that his opinion appears to be based on certain factual instructions which could be criticised as inaccurate under a current understanding (see further discussion of these below).

31. Returning to *Blackbushe Airport*, the lead judgment was given by Andrews LJ and includes the following observations (the emphasis, where added, is my own):

   "*26. The ambit (or physical extent) of the curtilage of a building in any given case will be a question of fact and degree. Various factors may be helpful in resolving that question, including, where relevant, a consideration of the statutory consequences of a finding that land (or a building or other structure or object on it) falls within or outside of the curtilage of a building. In certain contexts, the Court may be slightly more generous in its application of the relevant factors to reach a particular result, bearing in mind the purposes of the governing statute; for example, when determining whether an ancillary structure falls within the curtilage of a listed building.* ***But that does not mean that the concept of curtilage is different in listed building cases."***

32. She continued:

   "*50. 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. In Barwick & Barwick v Kent County Council (1992) 24 HLR 341, ("Barwick") Sir David Croom-Johnson made the following pertinent observation (at p.346) with which I respectfully agree: "It is not possible to give a comprehensive definition of a curtilage. Indeed it would be most inadvisable. One can only describe a curtilage when one sees it and decides whether it was a curtilage, or not..." "*

33. And further:

   "*55. Moreover, as will be seen, although the size of the land will be a relevant consideration, the extent of the curtilage of a building may vary with the nature and size of the building. To refer to the area as "small" (or conversely "large") is not particularly helpful in a context where size is relative. What falls within the curtilage of a manor house, or a large industrial mill, or a factory, may not be the same as what falls within the curtilage of a dwelling house. What falls within the curtilage of a dwelling-house may depend on the size and configuration of the dwelling-house. Even so, proportionality, whilst relevant, may not be definitive; a small cottage will sometimes have a large garden, whereas a large townhouse may have a tiny terrace.*"

34. And at 110:

   "*In any event, for the reasons already stated,* ***I do not accept that the test in a listed building case is any different,*** *although in order to be treated as if it were part of the*

listed building, a freestanding structure within the curtilage must also be ancillary to that building."

35. In a concurring judgment, Nugee LJ said:

   " *133: In grander houses, the curtilage would extend to "the house, the stables and other outbuildings, the gardens and the rough grass up to the ha-ha if there was one", but not to the 100 acre park surrounding a mansion house (Dyer at 358F-G per Nourse LJ); thus it would include a wall forming part of a ha-ha (Watson-Smyth v Secretary of State for the Environment (1992) 64 P&CR 156); and a stable block even some distance away from the main house (Skerritts); but not 64½ acres of a park, meadow land and pasture land (Buck d. Whalley v Nurton (1797) 1 B & P 53); nor a 650m long fence along the driveway (Lowe v First Secretary of State [2003] EWHC 537 (Admin)). Admittedly a devise of a mansion-house to the testator's wife was held to include three meadows let for grazing in Leach v Leach [1878] WN 79, but in Methuen-Campbell at 543F Buckley LJ said that he did not think, unless there was some special context, that this very liberal construction adopted by Malins V-C was good law*."

36. The key test, then – which applies to questions of curtilage to listed buildings as well as in other contexts (such as the common land context considered in *Blackbushe Airport*) – is whether the land in question is so intimately associated with the building to lead to the reasonable conclusion that the land was <u>part and parcel</u> of the building (i.e., here, Stoke Lodge.)

37. To my mind there are essentially two competing possibilities here: either the curtilage of Stoke Lodge is limited to the smaller area immediately around the house, which appears to feature trees, contains a cluster of outbuildings and the former walled garden, and is <u>to some extent</u> is separated by those trees from the wider playing fields which were originally the parkland associated with the house; or the curtilage is essentially delineated by (and thus includes) the stone boundary wall which encloses, on three sides at least, the wider open space which once formed the parkland setting of the house (which would mean the boundary wall is likely to be curtilage-listed).

38. In the survey of authorities on the point, the Court of Appeal in *Blackbushe Airport* mentions some cases in which large houses are considered. None are authoritative but they do assist to some extent with how courts have, in the past, treated this question of the parkland associated with a large house. However, caution is required because not a great deal can be determined now about the particular facts of such cases. No real test of principle arises.

39. In *Dyer* (mentioned in *Blackbushe Airport* at [133]) the 100-acre park around a former manor house (coincidentally, by then used as a school) was not curtilage. However, the Court of Appeal in that case appears to me to have been significantly influenced by the question of size, which we now know (but which was not clear then, because Skerritts of Nottingham Ltd v SSETR (No.1) [2001] QB 59 had not by then been decided) is not a determinative factor. In *Dyer*, the Master of the Rolls said:

"*"Curtilage" seems always to involve some* ***small*** *and necessary extension to that to which the word is attached*

40. Nourse LJ added:

"*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 outbuildings, the gardens and the rough grass up to the ha-ha, if there was one.*"

41. As such, firstly the parkland there concerned was very much bigger – 100 acres compared to 22 here – but secondly (and in my view more importantly) the Court of Appeal certainly seemed to be concerned with its size relative to the main building, something which is (post-*Skerritts*) not determinative, albeit might be relevant. It is also true that we know little about the precise physical layout of the site concerned there, although there is reference to the house standing "*on the edge*" of the 100-acre parkland. I note that there is no suggestion that there was a ha-ha at Stoke Lodge.

42. A further case, Sumption v LB Greenwich and Anor [2007] EWHC 2776 (Admin) concerned the question of *when* the extent of curtilage is to be determined, in a case where the domestic garden of a house in Greenwich had been extended and further enclosed. The answer was that the extent of curtilage was to be judged "*from the factual situation existing at the date of the application*" – see para. 26 - and in that case enclosure of the additional land and its incorporation into domestic garden showed that it was now part of the curtilage of the house. It follows that in principle, the extent of curtilage can change over time.

43. Drawing all that together, and noting that this is not a question of law but of fact (and so not, at least primarily, for a lawyer to determine), and also that I have not visited the site and am largely reliant on secondary sources:

    a. The central question is whether the wider open space (enclosed by the boundary wall on three sides) can be considered to be so intimately associated with Stoke Lodge that it is properly to be considered **part and parcel of Stoke Lodge**.

    b. It is clear to me that this land was designed, when the house was built, to read as very much part of the property. To adapt one of the formulations used in the authorities, the modest "*small parkland*" surrounding Stoke Lodge, across which the formal driveway went to the gatehouse to the north, and on which parkland trees were planted, would have read (and was intended to read) as part of Stoke Lodge.

    c. Although the immediate area around the house is quite well-treed now, there is no formal enclosure (or separation) of that area from the wider parkland (save for the fence erected in 2018, which is not relevant for these purposes). I note that the Planning Inspector in 2026 said that these tree belts "*have provided physical separation between the building and the playing fields*" but she also notes that this is less so to the west of the house, where views of the house are available from the open space.

    d. She also says that the playing fields do not form "*part of the curtilage of the listed building*" but no analysis underpins this, it was not essential for her to decide, and it may simply be a reference to the way the Council and/or applicant put its case to her: indeed, she knew that the question of curtilage was controversial as between the parties and did not arise for determination in that appeal: see paragraph 30 of her decision letter. I do not think that reference adds anything of substance to the analysis.

    e. The question of whether the open space was ever subdivided is not, to my mind, especially helpful. I note that Matt Lewin thought, in 2018, that it was relevant: see paragraph 16 of his advice. I am not sure there is any evidence that the land "*remained in agricultural use until at least the 1920s*", and indeed this does not seem to be consistent with the fact that it formed the parkland associated with the dwelling. Its separation into paddocks was not – as noted by the Council's heritage officer – indicative of some other use. Such separation was normal for the parkland of a residence of this kind.

f. Further, although it is not entirely clear, Mr. Lewin's paragraph 16 seems to imply that there was some relevant separation between Stoke Lodge itself (in "*its own well-defined plot*") and the surrounding land (which, he says, remained in agricultural use). That appears to misunderstand the way the land was developed: Stoke Lodge was erected in 1836 and the land around it enclosed by the perimeter wall, and turned into "*small parkland*" associated with the house. That part of the history seems to me to be crucial and is not really reflected in paragraph 16 of Mr. Lewin's advice.

g. Further, I am not at all sure that Mr. Lewin's conclusion at paragraph 19 that "*Stoke Lodge has had a well-defined area of land immediately enclosing it and there have been identified boundaries between Stoke Lodge and the surrounding land*" is justified on what I have seen (and is not made out on the two aerial photographs I have seen, which I am told correspond with the ones he saw). I have not seen any evidence of (separate) enclosure of the land immediately surrounding Stoke Lodge prior to the fence erected in 2018, or 'identified boundaries' in that location. Nor can I see that the later (2018) photograph shows, as he put it, "*Stoke Lodge in a well-defined enclosure with the boundary marked by trees and hardstanding.*" The hardstanding visible seems to be the car park on the site of the former walled garden (which seems uncontroversially to have been *within* the curtilage in any event). There are trees visible, but they do not appear to form any kind of boundary. I should say that all of this really underlines the danger of seeking to answer a question of fact and degree by reference to aerial photographs: what is required is a comprehensive understanding of the site and its history.

h. I note that at paragraph 11(e) of his advice, Mr. Lewin notes that Cotham School's planning agent noted in August 2018 that the Council's own Conservation Officer had recently advised that the existing stone boundary wall which partially encloses the land, was not listed. Mr. Lewin says "*…I infer, because it was not within the curtilage of Stoke Lodge.*" Mr. Lewin does not return to this point in his analysis, but I am not sure that his inference is correct: the relevant report talks of a *section* of the wall only, and does not engage with the idea of curtilage-listing. It may be that all that was meant was that the wall is not separately listed (which is true). For what it is worth, the Recommendation report by the Council's Conservation Officer (in its final published version) describes[3] the same wall as "c*urtilage-Listed*."

[3] At paragraph 2.20

i. It is, though, obviously relevant – albeit not determinative – that a continuous boundary wall of some age encloses (most of) this wider open space. This points towards the parkland being enclosed as part of Stoke Lodge, and treated as one property, but that does not really help with whether the land thereby enclosed is 'part and parcel of' Stoke Lodge. What I do not think can be said is that there is or was any *other* form of enclosure, delineating the area immediately around Stoke Lodge, in contradistinction to the wider land (save for the fence erected in 2018 and not relevant for these purposes).

j. Lastly, I turn to the comment of Andrews LJ at paragraph 26 of her judgment in *Blackbushe Airport*. In that paragraph Andrews LJ notes that consideration of the statutory purpose behind the listing regime in the 1990 Act might point towards "*a slightly more generous*" application of the test, even though the test itself was no different, in listed buildings cases. In the present case, the statutory consequences of finding that the curtilage excludes the perimeter wall would be that the wall is not listed; i.e., not protected by the Act (which would, in general terms, go against the general purposes of the Act). This is not (because it was pre-*Blackbushe Airport*) a factor considered by Mr. Lewin in his advice. To my mind it is at least potentially relevant to note this effect, and that it would or might suggest a more generous application of the relevant factors here.

44. The matter is not, in my view, capable of definitive resolution by a lawyer in these circumstances (and in particular not one who has not visited the site). It should be revisited by the Council in light of the full factual information, a proper understanding of the history of Stoke Lodge and the surrounding land, and the recent authority of *Blackbushe Airport*.

45. For the reasons given I consider it would be most unwise to rely on Mr. Lewin's 2018 advice, prior to *Blackbushe Airport* and at least potentially based on a mistaken understanding of the history and physical condition of the site, as determining the question of the curtilage.

46. It is clear that the 'heritage story' of this land is important: it was a designed parkland setting, of modest size, to the dwelling and intended to be read and used as part of it. Its size is not so great as to immediately militate against being considered curtilage. This has been underplayed in Mr. Lewin's advice, in my view.

47. I acknowledge that the Planning Inspector said in terms that the wider open space was *not* curtilage, but for the reasons addressed I do not consider that this was intended to be a definitive ruling on that issue, which did not arise for determination in that appeal.

48. Overall, it would likely be incumbent on the Council – and would certainly be prudent - to revisit their view on the question of curtilage given the more recent authority, and the factual matters described in this advice; and it would appear to be open to the Council to conclude that the curtilage of Stoke Lodge extends to the whole of the parkland/open space (thereby including the boundary wall).

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12 May 2026

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