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A tale of two curtilages

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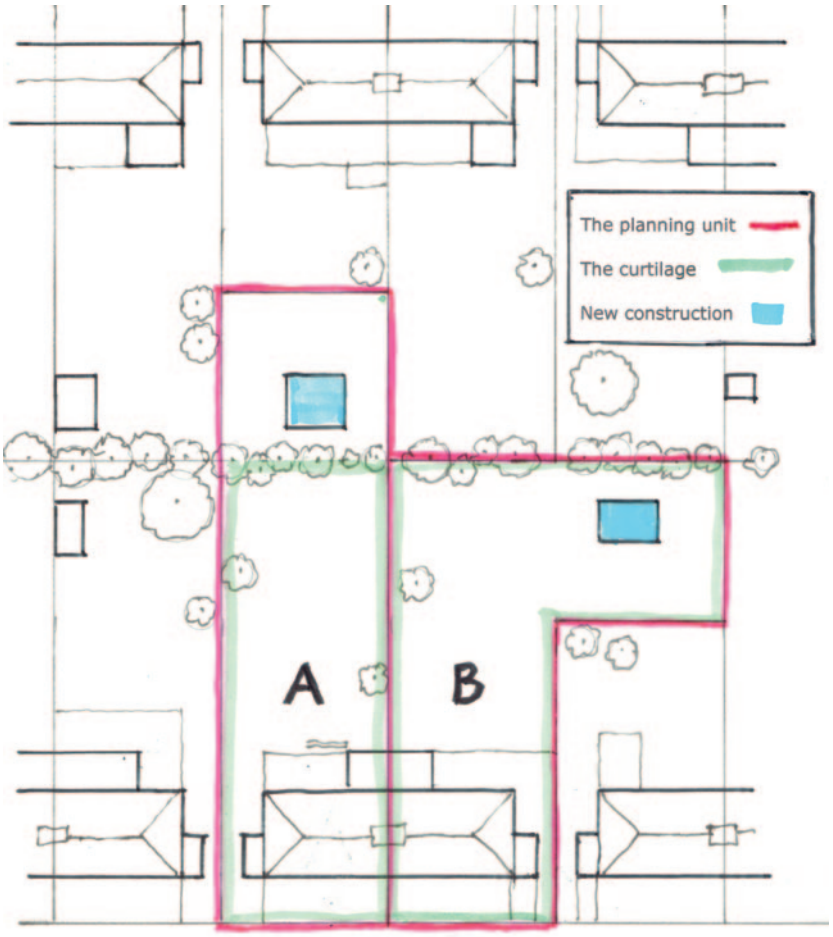
Here we are again, examining the meaning of an undefined (in planning law) but very crucial planning term - crucial because The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO] specifies that permitted development rights allowing householders to construct extensions and outbuildings only apply for any land that is designated as the curtilage of a dwellinghouse.

The Technical Guide to the GPDO (published in 2019 and surely in need of an update) does make clear that curtilage is land which forms part and parcel with a house - usually the area of land within which the house sits, or to which it is attached, such as the garden; but for some houses, especially in the case of properties with large gardens, it may be a smaller area. It is important to note that there is no rule about the size or extent of the area that can be designated as curtilage.

However, what can be constructed within the curtilage is limited by parameters set out in Class E of the GPDO and by the use that is proposed. This has to be incidental to the normal residential use of the dwellinghouse and must not be ancillary (ie similar to domestic uses of the house such as bedrooms), or of a materially different commercial nature (ie being used to run a successful business). This opens yet another set of controversial and ill-defined planning conundrums which I hope to deal with in a later column.

The last time I considered curtilage in these pages was April 2014 and there have been several appeals and court cases since then to throw more confusion and muddle into the mix (as so often with planning terms that are not properly defined). So this is an attempt to shed some light on the question of what is meant by domestic curtilage.

The owners of houses A and B have extended their gardens by purchasing land from their neighbours. It is evident for both that the land remains as domestic garden so there is no change of use requiring planning approval. (This would not be so if either piece of new garden had been purchased from an adjoining field comprising another use such as farmland.)



House A cannot use pd rights because its curtilage is marked by an existing boundary hedge and a stream. In the High Court case of Sumption v London Borough of Greenwich and Rokos [2007] it was emphasised that the Court of Appeal has established, as a matter of law, that the curtilage of a dwellinghouse cannot be expanded by simply annexing adjoining land. In Methuen-Campbell v Walters [1979] it was found that for land to fall within the curtilage of a building there must be an intimate association with it.

House B on the other hand is able to use pd rights because there is now no dividing hedge or fence and the curtilage can therefore be enlarged. The cultivated L-shaped garden forms part and parcel of the residential planning unit and serves the purpose of an amenity for the family living in the house. The size of the garden area is taken as a matter of our old friend 'fact and degree': here the garden area, mostly lawn, is (as a matter of fact and degree) part of the dwellinghouse and its surround.

The new constructions illustrated could be outbuildings, such as garden sheds or hobby studios, swimming pools or sunrooms - but cannot include primary residential uses such as bedrooms or living rooms. More on this later.

curtilage n. An area of land attached and belonging to a house, etc. – Chambers Dictionary

A variant of Old French courtillage, from courtil 'small court'. ■