



# Historic England

## LISTED BUILDINGS AND CURTILAGE

Historic England Advice Note -

Consultation draft - 27 January 2017

### Summary

The law provides that buildings and other structures that pre-date July 1948 and are within the curtilage of a listed building are to be treated as part of the listed building. Altering or demolishing such structures may require listed building consent. Carrying out works without having obtained listed building consent when it is needed may be a criminal offence. It is therefore important to assess the extent of the curtilage of a listed building, but it can be difficult to define. This advice note gives hypothetical examples to assist in that assessment.

## Introduction

A listed building is commonly identified in the National Heritage List for England by an address only, although some more recent entries contain a plan showing a red line around the listed building (including its curtilage and any structures associated with it). In either case, unless the list entry explicitly says otherwise, the law (section 1(5) of the Planning (Listed Buildings and Conservation Areas Act 1990) says that the listed building also includes any ancillary object or structure within the curtilage of the building, which forms part of the land and has done so since before 1<sup>st</sup> July 1948.

Any ancillary object or structure fixed to a listed building is also treated as part of the building, again unless it is otherwise explicitly excluded in the list entry. That can itself raise difficult questions. Please see <https://historicengland.org.uk/advice/hpg/has/listed-buildings/> for more help on this issue. This note covers only the issue of structures within the curtilage.

The curtilage of a building (the principal building) is in general terms any area of land and other buildings that is around and associated with that principal building.

Not all buildings will have a curtilage. A town-centre building with no garden or yard may have no curtilage whatsoever. With those that do there will be cases where the extent of the curtilage will be clear, such as an obvious garden boundary. In other cases, it can be very difficult to discern the boundary with confidence.

It may be a criminal offence to carry out works to a building in the curtilage of a listed building without listed building consent. So if you have any doubt about the extent of the curtilage then please contact your local authority's planning department for advice.

A summary of the legal position on curtilage is given in the Historic England Heritage Protection Guide under Listing <https://historicengland.org.uk/advice/hpg/has/listed-buildings/>.

The courts have said that there are three key factors to be taken into account in assessing whether a structure or object is within the curtilage of a listed building:

- the physical layout of the listed building and the structure ;
- their ownership, both historically and at the date of listing; and
- the use or function of the relevant buildings, again both historically and at the date of listing – and in particular whether the use of the structure was ancillary to (that is, subordinate to and dependent on) the purposes of the listed building at the date of listing (these tests were first proposed in the Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC, 1982, as accepted by Debenhams plc. v Westminster CC, 1987).

### Buildings listed before 1969

Given the three factors listed above, it is also important to note that there may be uncertainties if the principal building had been listed prior to 1969. This is because the provision, now in section 1(5) of the Planning (Listed Buildings and Conservation Areas Act 1990, which defines a listed building and

refers to its curtilage, only came into effect on 1 January 1969. Prior to this, the relevant legislation relating to a listed building only referred to a “building”, with no reference being made to objects or structures attached to a building, or buildings or structures in the curtilage. Therefore, whereas the listing of any building listed after 1969 would probably have included any relevant ancillary objects or structures, this would not have operated retrospectively. Although there is no case law to confirm the matter, it would appear that the most logical way of dealing with buildings listed before 1969 would be to consider the position that existed at 1 January 1969 in relation to any relevant ancillary objects or structures.

The date of listing of a listed building is given in the list entry summary for each listed building in the National Heritage List for England (<https://historicengland.org.uk/listing/the-list/>).

### **Curtilage Examples**

The following hypothetical examples outline how curtilage can be understood, particularly in the kinds of cases on which Historic England is commonly consulted. They show how, in each case, changes to the facts – physical layout; ownership, past and present; and use, past and present (in particular whether the building in question was ancillary to the listed building) – can, through their interplay, change the conclusions that should be drawn.

We would emphasise that understanding curtilage rests on the particular facts of each case. It will be for the local planning authority to reach a conclusion as to whether or not buildings are within a curtilage in question, and ultimately a matter for the court to determine.

The examples are given in order to help the analysis of real-life situations. The facts in a particular case may be similar to those in an example below, but that does not mean that the example provides a definitive answer. There will often be some factual distinction, and that could be important and decisive.

Please note that the plans are not to scale; north is at the top in each plan.

### **Review and Revision of list entries**

Further clarity regarding the extent of the protection afforded by listing can also be obtained through review and revision of a list entry, to specifically include or exclude certain elements. Historic England can reappraise the listing status of buildings. A re-appraised listing should set out clearly and with certainty what structures are intended to be protected by the listing and exclude those parts of the site which do not merit protection.

Historic England also now provides Enhanced Advisory Services - see <https://historicengland.org.uk/services-skills/our-planning-services/enhanced-advisory-services/listing-enhancement/>.

### **Other Provisions for Protection**

It is important to appreciate that there may be other provisions for protection that arise in the case of an unlisted building or other structure adjoining a listed building, including:

- assessment of the contribution of the structure to the significance of the listed building nearby, by its presence in the setting of that building (see Historic England Good Practice Advice in Planning 3: The Setting of Heritage Assets - <https://content.historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/gpa3.pdf/>); and

- although not formally part of the listed building, it may have sufficient interest to be classified as a non-designated heritage asset, particularly if it has been included by the local planning authority in the list of buildings of local interest (see Historic England Advice Note 7: Local Heritage Lists - <https://content.historicengland.org.uk/images-books/publications/local-heritage-listing-advice-note-7/heag018-local-heritage-listing.pdf/>)
- it may be within a conservation area, so that its demolition will need planning permission and its alteration will require careful consideration (see Historic England Advice note 1 – Conservation Area Designation, Appraisal and Management - <https://historicengland.org.uk/images-books/publications/conservation-area-designation-appraisal-management-advice-note-1/>).

# 1 Domestic

## 1.1 House (Grade II) with former coach house and stable

House and detached former coach house and stable used as garages and for storage of domestic items standing in large garden. The stables are 60 metres away from the house, off the back drive.

- Date of buildings: late 17th century house with 18th century stable, extended to provide a coach house in the early 19th century. The stable and coach house have since the 1930s provided garaging and storage for the listed house and the current owner continues to use them in this way.
- Date of listing of principal building: 1970s
- Physical layout: see plan. The detached former coach house and stable stand within the large garden of the listed house
- Past and present ownership: all the buildings have always been in the same ownership as the listed house
- Previous and current uses of the ancillary structure: the former coach house and stables have uses ancillary to the listed house.



Q: Are the former coach house and stable within the curtilage of the listed house and should they therefore be treated as part of the listed building ?

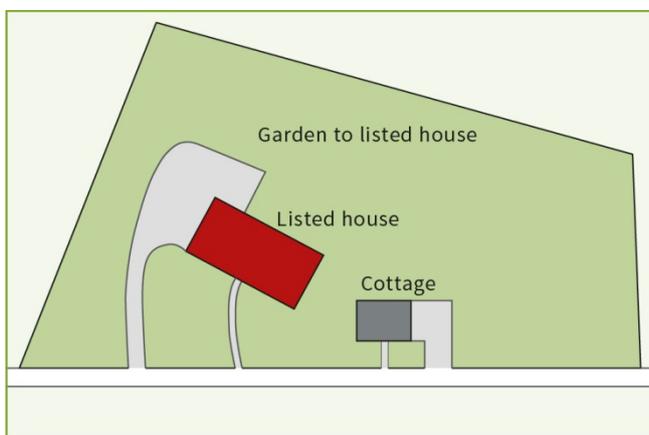
A: In all likelihood the garden boundary defines the curtilage in which the listed house and the former coach house and stables stand. The coach house and stables date from before 1948. They each continue to be used for purposes subordinate to and dependent on the domestic use of the listed house and have been in such use since before the date of listing. The coach house and stables are therefore to be treated as part of the listed building.

The conclusion might change if the buildings predated 1948, but had been transferred into a separate ownership and/or use before the date of listing. If instead of an 18<sup>th</sup> century stable and coach house building there was a garage from the 1960s, that would not be treated as part of the listed building even though it was clearly within its curtilage at the date of listing, because of the pre-1948 requirement.

## 1.2 House (Grade II) with detached cottage in its garden

Single detached cottage in garden of detached listed house.

- Date of buildings: house dates from the early 17th century, the cottage from the late 18th
- Date of listing of principal building: 1980s
- Physical layout: see plan
- Past and present ownership: cottage, used by the gardener/domestic staff to the main house, has always been in the same ownership as the listed house
- Previous and current uses of the ancillary structure: the cottage currently is and appears always to have been occupied by domestic staff employed by the owner of the listed house, and therefore ancillary to it.



Q: Is the cottage within the curtilage of the listed house and should it therefore be treated as part of the listed building?

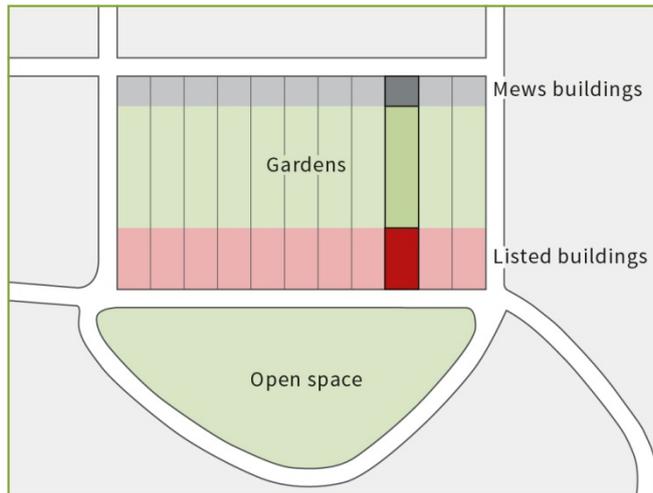
A: The cottage has always been ancillary to the listed house, and is within its garden. There is little doubt it would therefore be considered to be within the curtilage, and therefore treated as part of the listed building.

If the cottage and its garden had been sold away from the listed house during the 1970s – that is, before the house was listed – it would not have been ancillary to the house at the time of its listing and it would not therefore be treated as part of the listed building. However, were it to have been sold away after the date of listing of the main house, it is likely that it would still be considered to be treated as part of the listed building, because it was ancillary at the date of listing and therefore formed part of the curtilage.

## 1.3 Terraced house (Grade II) with detached terraced mews building in a mews street behind

Terraced house, listed Grade II, with a subsidiary terraced mews cottage at the end of its garden. Although some of the adjacent mews cottages are in separate ownership from the front terraced houses, this one is in the same ownership.

- Date of building: 1822-28, both terrace and mews
- Date of listing of principal building: 1970s
- Physical layout: see plan
- Past and present ownership: the mews house is in the same ownership as the listed front building
- Previous and current uses of the ancillary structure: at the date of listing, the mews cottage was domestic accommodation related to the listed house; it is currently used as a granny-annexe.



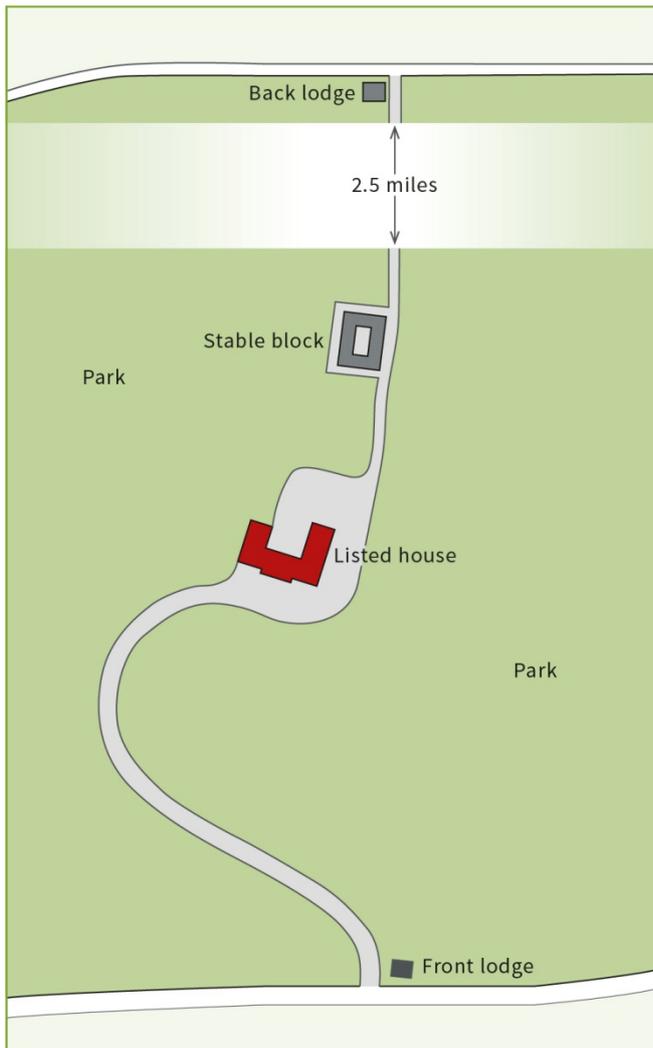
Q: Is the mews cottage within the curtilage of the listed house and should it therefore be treated as part of the listed building?

A: The mews cottage predates 1948, it is within the same ownership as the listed terraced house and has always been used for purposes ancillary to the listed house. The cottage would therefore be treated as part of the listed building. However, had the mews cottage been sold off prior to listing, this would be very likely to result in the cottage not being treated as part of the listed building.

#### 1.4 Country house (Grade II\*) with stable block and two lodges

The listed house is a large, handsome, stone building on rising ground. The stable block is set back a distance of 200 metres behind the house and is used partly as stables and partly as garaging. Lodges stand at the entrances to the front and back drives.

- Date of buildings: house 16th to 19th century, stable block 18th century and lodges later 19th.
- Date of listing of principal building: Mid-1970s
- Physical layout: see plan. Due to the layout of the park, the lodge on the back drive is over two and a half miles from the main house.
- Past and present ownership: all are within the same ownership
- Previous and current uses of the land and buildings: the buildings are all in variations of their original uses. At the date of listing, and ever since, the lodges have been used as ancillary staff accommodation to the main house. The stables are used partly as stables for recreational horse use and partly as garaging by the owners of the main house



Q: Are the stable block and lodges within the curtilage of the listed house and therefore should they be treated as part of the listed building?

A: The curtilage is not easy to define here because the park is large. However, all the buildings are ancillary in use to the main, listed, house, including the further lodge, though that is at some distance from the listed house. Because of this, it would appear that the stables and the lodges should be treated as being part of the listed building, although it is more arguable when it comes to the back lodge.

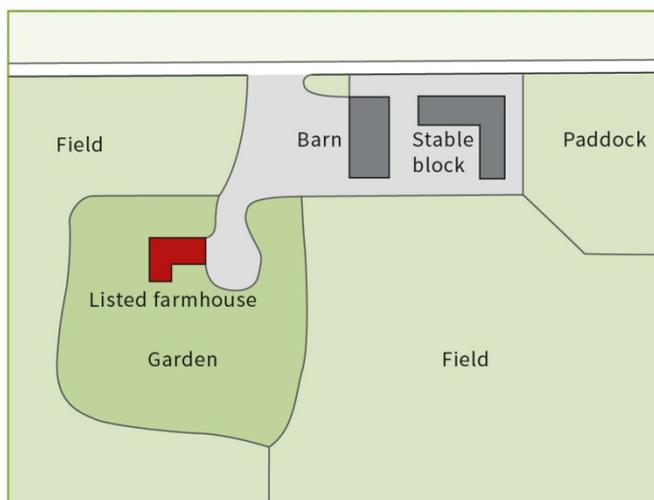
The curtilage of a property is not always a small area, but the test of ancillary connection is likely to be more important as distance increases. If one of the lodges were not in a use ancillary to that of the main house at the date of listing, then it is likely that it would not be treated as part of the listed building.

## 2 Farms

### 2.1 Farmhouse (Grade II) with two detached farm buildings

Stone-built farmhouse with two detached farm buildings; one a small barn, the other a stable block, both in agricultural use.

- Date of buildings: early 18th century farmhouse and ancillary farm buildings  
Date of listing of principal building: 1980s
- Physical layout: see plan. The farmhouse stands in its own garden.
- Past and present ownership: the barn and the stable block were in the same ownership as the farmhouse when it was listed, but the farmhouse is now in separate ownership.
- Previous and current uses of the land and buildings: at the date of listing the farmhouse was in use as the farmer's dwelling, but is now used as a separate dwelling by a family with no connection to the farm; the other buildings were in working agricultural use, with the stables being used to store tractors.



Q: Are the farm buildings within the curtilage of the listed house and should they therefore be treated as part of the listed building?

A: The answer turns on the degree of physical separation and the distinction in use. In the *Jews Farmhouse* case [R v Taunton Deane Borough Council, 2008] the High Court decided that a barn in farm business use was not within the curtilage of the listed farmhouse nearby, because the two were separated by a wall. The physical separation was a factor, and so was the fact that the barn was being used purely for farm business purposes, in contrast to the principally domestic nature of the farmhouse, even though business administration was conducted in the farmhouse too.

That decision contrasts with comments made by the House of Lords in the *Debenhams* case [see footnote 1] where it was suggested that a farm 'steading' (the buildings forming a farm other than the farmhouse itself) comprised buildings in sufficiently close relationship with a farmhouse to be within its curtilage. However, the *Debenhams* case was obviously about a retail store (Hamley's in London) and not about the particular facts of a real farm.

So in our view, the distinction between the mostly domestic nature of the farmhouse and the business-related function of the barn and stable block in the above hypothetical example are likely to

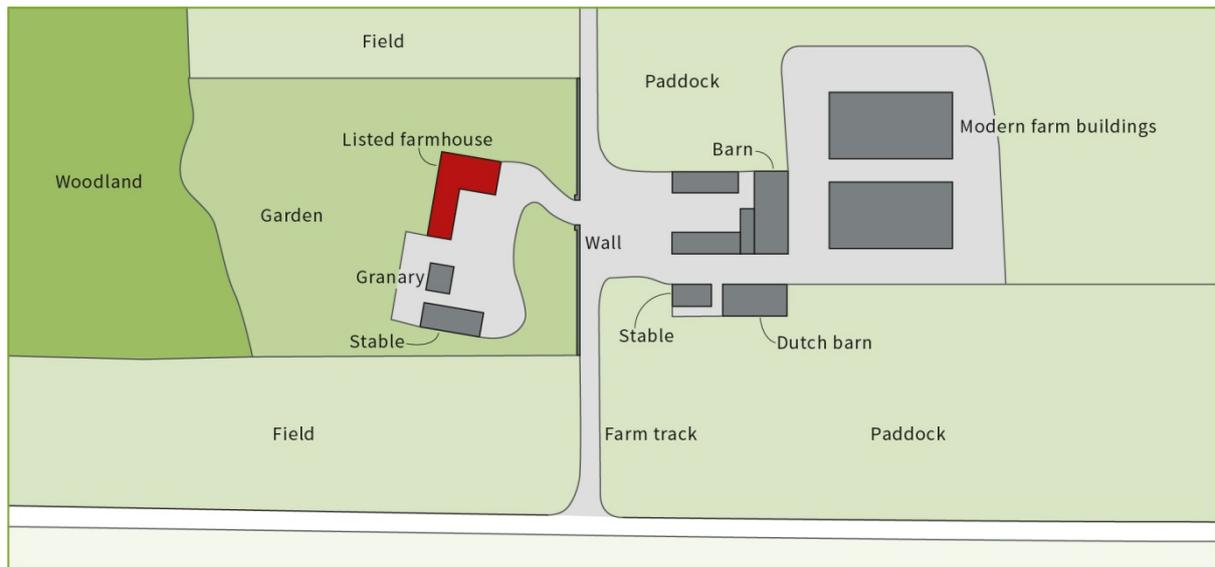
mean that they would be considered to be outside its curtilage, although arguably they are not as physically separated or distinctly grouped as were the collection of buildings in the Jews Farmhouse case.

The facts in each case will always need to be considered carefully. A closer physical relationship (such as around a courtyard) or a closer relationship in use may be more the sort of 'steading' that the House of Lords was thinking about in the Debenhams case, and outbuildings of that type in that arrangement may well fall within the curtilage of a farmhouse.

## 2.2 Farmhouse (Grade II) with various detached farm buildings

Farmhouse standing in its own garden, with a granary and a small domestic stable building nearby. The main farmyard is to the east with a barn, various outhouses and open-fronted cart sheds around a rectangular yard. A Dutch barn and a stable building originally for farm horses are set to the south of the yard, and two large Atcost-type sheds beyond the yard to the east.

- Date of listing of principal building: 1970s
- Date of buildings: early 19th century farmhouse, with farm buildings generally of similar date (other than the modern sheds). All the farm buildings have been altered as agricultural uses have developed, but they remain in agricultural uses; the two modern sheds were erected in the 1990s
- Physical layout: see plan. The farmhouse, the small stable and the granary lie within the garden of the farmhouse, which is separated by an old wall from the yard. The other farm buildings are outside the walled garden.
- Past and present ownership: the house and the buildings shown on the plan are all in the ownership of the farm and have been since the nineteenth century, at least
- Previous and current uses of the land and buildings: at the date of listing the house was in domestic use, with one small room used as an office from which the agricultural business is managed. The rest of the historic farm buildings are in various kinds of agricultural uses, except for the granary and stable adjacent to the house, which at the date of listing were in use ancillary to the domestic use of the house. The Atcost sheds are also in agricultural use.



Q: Are any of the farm buildings within the curtilage of the listed house and therefore treated as part of the listed building?

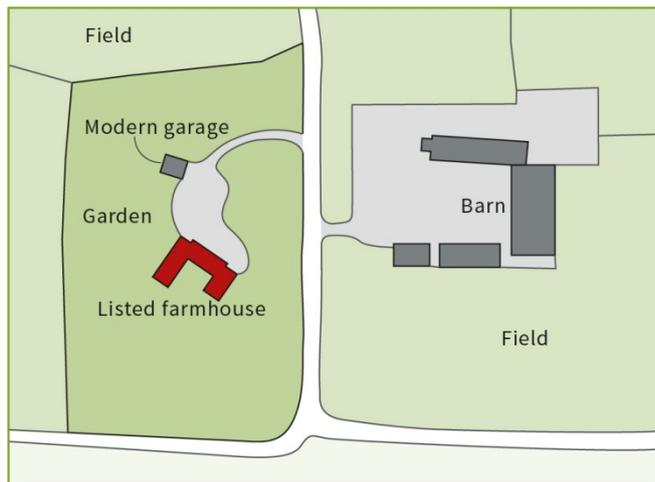
A: The granary and the stable building in the garden are almost certainly to be treated as part of the listed building given their domestic use at the date of listing and their location.

The clear physical separation between the farmhouse garden and the other buildings and their agricultural business use means they are quite unlikely to be considered as within the curtilage. The modern Atcost buildings were built after 1948 so could never be treated as part of the listed building in any event, even if they were within the curtilage.

### 2.3 Listed former farmhouse (Grade II) separated by road from farm buildings

Listed farmhouse, now no longer related to the farm buildings in use or ownership, standing on the west side of the lane down to the other farm buildings, with a 1990s detached garage building nearby, and with a variety of farm buildings on the other side of the lane.

- Date of listing of principal building: 2000s
- Date of buildings: medieval farmhouse with 1990s detached garage; 18th century and later farm buildings
- Physical layout: see plan.
- Past and present ownership: the farm buildings are all in the ownership of the farm and have been since the nineteenth century, at least. The farmhouse and garage were sold away from the farm in the late 1990s.
- Previous and current uses of the land and buildings: the farmhouse is in domestic use, and the garage is ancillary to the farmhouse. The rest of the farm buildings are in various kinds of agricultural uses



Q: Are the farm buildings within the curtilage of the listed house and should they therefore be treated as part of the listed building?

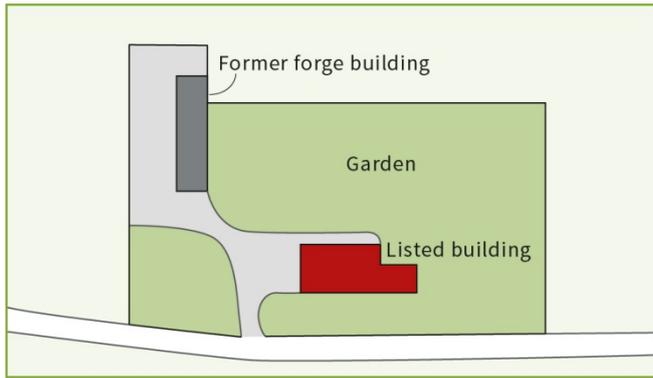
A: At the date of listing the farm buildings were not in the same ownership as the farmhouse and therefore the farm buildings could not be said to have been ancillary to the farmhouse on any basis. The grounds in which they sit, moreover, are not only outside the walled area of the farmhouse's garden, but are also separated by a public road. The farm buildings are therefore clearly not within the curtilage of the farmhouse. The garage is in the curtilage, but was built in the 1990s and therefore would not be treated as part of the listed building.

### 3 Commercial and Industrial Premises

#### 3.1 Domestic house (Grade II) with detached workshop building in rear yard/garden

Early 18th century house with single-storey former forge building in rear yard/garden.

- Date of buildings: early 18th century house with early 19th century forge in garden
- Date of listing of principal building: 1980s
- Physical layout: see plan
- Past and present ownership: the house and forge building seem to have always been in the same ownership
- Previous and current uses of the land and buildings: house always used as residential building, with forge in light industrial use until it closed in 1974, since when it has been used as storage for the house



Q: Is the former forge building within the curtilage of the listed house and should it therefore be treated as part of the listed building?

A: The former forge building has been in a different use from the house for most of its life, but its use was ancillary to the house at the date of listing, so it should be treated as part of the listed building.

If it had still been used as a forge when the house was listed it would not be part of the listed building.

### 3.2 Public house (Grade II) with detached stable building

Old public house, early 16th century in origin, with a mid-18th century former stable, now used as a games room and accommodation by guests of the public house.

- Date of buildings: early 16th century pub and mid-18th century former stable, the latter in ancillary use since before 1948
- Date of listing of principal building: 1980s
- Physical layout: see plan
- Past and present ownership: the former stable is in the same ownership as the public house
- Previous and current uses of the land and buildings: public house with former stable building ancillary to the public house. The stable has been used since the 1970s as games room and for staff accommodation by the public house.



Q: Is the former stable building within the curtilage of the listed house and should it therefore be treated as part of the listed building?

A: The stable building has always had a use ancillary to the use of the public house as a pub and should therefore be treated as part of the listed building.

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