

Case Name: *Hampshire County Council v Secretary of State for Environment, Food and Rural Affairs & Ors* [2020] EWHC 959 (Admin) (23 April 2020)

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Commentary: The claimant, Hampshire County Council, applied by way of judicial review to quash the defendant Secretary of State's inspector's decision to remove part of Yateley Common from the register of common land. The land in question comprised a large area of operational land used in connection with Blackbushe Airport. The claim turned on whether all of such operational land fell within the "curtilage of a building", that is, the airport terminal building, for the purposes of Schedule 2, para 6(2)(b) of the Commons Act 2006, which sets out criteria for common land to be removed from the register.

The claimant's grounds were, first, that the inspector had failed to apply an additional test for land to be in the "curtilage of a building", that is that the size of the land exceeds what could properly be described as the "curtilage" of such building (based on analysis of the Skerritts case in the Court of Appeal); and, second, that the inspector had misunderstood the term "ancillary", deciding that the terminal building was ancillary to the land as well as the land being ancillary to the building.

The second ground was successful. The judge held that the correct approach to "curtilage" in the 2006 Act was that for property to fall within the curtilage of a building is must form "part and parcel" of such building. While the use or function of the land and building are relevant, the fact that they have the same use or function is not sufficient for the land to be ancillary to the building. The first ground was not successful, in that the court did not agree that the case of Skerritts had established some new criterion of "largeness".

Case summary prepared by Ricardo Gama