

214 Hertingfordbury Road, Hertford, SG14 2LB

OPINION

On the relationship between the property 214 Hertingfordbury Road and Epcombs and the issue of whether 214 Hertingfordbury Road is properly to be regarded as a curtilage listed building.



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1. **Introduction**

1.1 I am instructed by Mr Kevin Steptoe, Head of Planning and Building Control at East Herts Council, to give my Opinion as to whether the property 214 Hertingfordbury Road is properly to be regarded as a curtilage listed building to the property Epcombs Hertingfordbury Road.

1.2 To assist me I was provided by Mr John Bosworth of the East Herts Conservation Team copies of the following documents :-

- a. Notes of Mr Bosworth's meeting with Mr Sheehan on Saturday 15th February 2014.
- b. A copy of a Legal Opinion dated 2010 obtained by Mr Sheehan concluding that 214 Hertingfordbury Road was not properly to be regarded as a curtilage listed building.
- c. A copy of a note prepared by a former Conservation Officer at East Herts Council concluding that 214 Hertingfordbury Road is properly to be regarded as a curtilage listed building.
- d. Copy of the Listed Building entry and description.
- e. A location plan
- f. Various historic plans.
- g. Mr Sheehan's representation to the Draft Hertingfordbury Conservation Area Appraisal.

1.3 I have also carried out a site visit, accompanied by Mr Bosworth.

1.4 I did not seek or gain access to either of the properties Epcombs or 214 Hertingfordbury Road but viewed both from the Public Highway, Hertingfordbury Road.

1.5 Finally, by way of introduction I am attaching to this Opinion a copy of the former Conservation Officer's note which I shall refer to in more detail later in this Opinion.

2. Consideration of the Issues.

2.1 The property Epcombs is Grade II listed. The listing entry describes it as :-

'Small country house. C17, altered and extended C18, early C19 and early C20'

2.2 There follows a more detailed description of the property which, although it deals with single storey outbuildings is silent as to the property now known as '214 Hertingfordbury Road'.

2.3 The position at law is that any object or structure within the curtilage of Epcombs which, although not fixed to it, forms part of the land and has done so since before July 1st 1948 is also protected by virtue of the Listed Buildings Act 1990 Section 1(5)(b).

2.4 The first matter for determination is therefore whether 214 Hertingfordbury Road falls within the curtilage of the Listed Building Epcombs.

2.5 Whether or not 214 Hertingfordbury Road does or does not qualify as a curtilage listed building is a matter of fact and degree for the decision maker taking into account the provisions of the Act, relevant Case Law establishing principles to be applied and the facts of the particular case on the ground.

2.6 In reaching my judgment I have applied my knowledge and experience gained through 40 years as a Planning Solicitor. I deal exclusively with Town and Country Planning matters and have dealt with similar Listed Building issues throughout my career as a Planning Solicitor.

2.7 Epcombs is bounded where it adjoins Hertingfordbury Road (the western side of the property) by a substantial wall in excess of 2m in height and of considerable age. Whilst the listed building entry includes 'garden wall to west' I am instructed that this may be an internal wall rather than the boundary wall fronting onto Hertingfordbury Road. Be that as it may the boundary wall fronting Hertingfordbury Road is of considerable age and clearly pre-dates 1948.

2.8 The property 214 Hertingfordbury Road is not only beyond the boundary wall that I have referred to but also on the other side of Hertingfordbury Road. This part of Hertingfordbury Road is now a cul-de-sac, but used to be the main road from Hertford to Hertingfordbury and points west before the construction of the Hertingfordbury by-pass. It is also noteworthy that there are no other buildings, and no other land to the west side of Hertingfordbury Road which are alleged to form part of the curtilage of Epcombs. 214 Hertingfordbury Road would therefore be an isolated outpost within the curtilage if it is properly so to be regarded.

2.9 My starting point would be to say that the western edge of the curtilage of Epcombs is defined by the substantial and old boundary wall adjoining Hertingfordbury Road. This presumption could be rebutted by reference to :-

- (i). The physical layout of Epcombs and 214 Hertingfordbury Road.
- (ii) Their ownership past and present and
- (iii) Their use or function past and present (*A-G (ex rel Sutcliffe) v Calderdale BC [1983] JPL 310 Court of Appeal*)

2.10 Before considering those three issues I should say that each case has to be determined on its own facts and references to other decisions are generally unhelpful because they in turn depend on their own specific facts. It is only where a court decision has set out legal relevant principles that reference to case law is relevant.

2.11 The previous Conservation Officer's Opinion (appended to this Opinion) states that '*it has already been established that number 214 Hertingfordbury Road has a historical relationship with Epcombs through historic maps, the existing landscape and the architectural characteristics of both buildings*'.

2.12 I see no evidence to support that contention. I have been supplied with a set of historic maps none of which show any stated relationship between 214 Hertingfordbury Road and Epcombs. I cannot see anything in the existing landscape which relates to the two buildings. Architecturally they are entirely different with 214 Hertingfordbury Road being a simple form building from the second half of the 19th Century and Epcombs being a 17th Century Country House - no architectural relationship is evident.

2.13 So far as ownership is concerned it would appear that at the date of the listing (12th April 1973) both Epcombs and 214 Hertingfordbury Road were owned by the same family. It would appear that currently both properties are owned by different individuals within the same family. Nothing is however known about the past history of joint ownership. Indeed it is apparent that Epcombs and 214 Hertingfordbury Road were built some 200 years apart, Epcombs in the 17th Century and 214 in the 19th Century.

2.14 Turning now to their use or function past and present, nothing is known about the historical use of 214 Hertingfordbury Road or whether it was constructed for any purpose in connection with the use of Epcombs. All that is known is that at the time of the listing the owners of Epcombs were the same owners as the owners of 214 Hertingfordbury Road and that 214 Hertingfordbury Road was used for the housing of two members of staff who worked at Epcombs. There is no

objective evidence to suggest that 214 was a stable block built and occupied in connection with Epcombs. The previous Conservation Officer's Opinion states that :-

'The building's name, plan form and location suggests it functioned as a stable block to the principal building'.

I have no evidence of any name of the building other than 214 Hertingfordbury Road; the plan form may suggest that it was once a stable block but there is nothing to indicate that it was a stable block to the principal building and the location certainly does not suggest that it functioned as a stable block to the principal building lying as it does on the other side of Hertingfordbury Road, beyond the large boundary wall to Epcombs and therefore isolated from Epcombs and its curtilage.

I have read all the documents listed on the Council's website in connection with the 2010 Planning Application and Application for Listed Building Consent. The Heritage Statement submitted with the 2010 Planning Application (3/10/1109/FP) and covering email from Peter Newsom (24.08.2010) confirms that the Victorian County History archives, the Hertfordshire archives and the Local Studies references are silent as to the building, as is the HER for Epcombs.

There is in the Heritage Statement supporting the Listed Building Consent Application (3/10/1766/LB) reference to a former stabling use of the building, but no reference is made to stabling in connection with Epcombs.

There is an internal East Herts Conservation and Design note from Dr Agie Sadraei to Hazel Izod dated 8th November 2010 where the author opines that *"it appears to have functioned as a coach house and stables associated with Epcombs manor....."*. The difficulty with that assessment is that it is made without any reference to material that would support that conclusion. It was indeed Dr Agie Sadraei who supplied all the local studies and Hertfordshire Archives references to Epcombs to Peter Newson, and as indicated above, all are silent as to a stable block or to the building now known as 214 Hertingfordbury Road.

2.15 The previous Conservation Officer's Report also says :-

'Epcombs has been identified in : "Hertingfordbury: The Change of the Village" as a 'stately mansion' with large gates, (surrounded by a high wall) making it barely visible from the street. From this description it is reasonable to presume that a building of this status would have had a stable block and the boundary is a historical boundary'.

Again, with the greatest respect, that is pure supposition, and not evidence. Epcombs may have had a stable block; equally it may have not. If it did have a stable block there is nothing on the facts to suggest, let alone confirm, that 214 Hertingfordbury Road was the stable block to Epcombs. There is quite simply a total lack of evidence on the point.

- 2.16 I am also told that when making a Planning Application in 2010 relating to 214 Hertingfordbury Road, the current owners also submitted an Application for Listed Building consent. I do not know the details of why they made that Application and whether it was on Officer's advice, but in any event the fact that they chose to make such an Application has no bearing on whether the property 214 Hertingfordbury Road is properly to be regarded as curtilage listed.

3. Conclusion

- 3.1 It is my firm opinion that the western side of the curtilage to Epcombs is defined by the 2m boundary wall fronting to Hertingfordbury Road, formerly the main road from Hertford to Hertingfordbury. The case of *Skerritts of Nottingham Ltd –v- Secretary of State for Environment, Transport and the Regions (2000) 2 P.L.R 102* in the Court of Appeal held that it was not an essential feature of a curtilage that it be small and that in the context of the Listed Buildings Act the curtilage of a substantial Listed Building was likely to extend to what were or had been in terms of ownership and function ancillary buildings.
- 3.2 For the reasons set out above I do not consider that taking into account considerations such as the layout of the buildings (Epcombs and 214 Hertingfordbury Road); their ownership past and present and their use or function past and present would serve to extend the curtilage of Epcombs to include the property 214 Hertingfordbury Road. 214 Hertingfordbury Road should not therefore, in my opinion, be regarded as a curtilage Listed building to the property Epcombs, Hertingfordbury Road.

R A Jameson

18th February 2016