

**ITEM 4.10 – 80 CRESCENT DRIVE, PETTS WOOD
EXTRACT OF PLANNING COURT DECISION**

Challenge Fencing Limited v Secretary of State for Housing Communities and Local Government and Elmbridge Borough Council.

Mrs Justice Lieven said:-

18. From these cases I draw the following propositions:-

- i) The extent of the curtilage of a building is a question of fact and degree and therefore it must be a matter for the decision-maker, subject to normal principles of public law.
- ii) The three Stephenson factors must be taken into account:-
 - a) Physical layout;
 - b) The ownership past and present;
 - c) The use or function of the land or buildings, past and present.
- iii) A curtilage does not have to be small but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration. Skerritts p.67;
- iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration but it is not a legal requirement that the claimed curtilage should be ancillary; Skerritts p.67C;
- v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant, Sumption at para 17 and the quotation from the OED of curtilage as “A small court, yard or piece of ground attached to a dwelling house and forming one enclosure with it”. In my view, this will be one aspect of the physical layout, being the first of the Calderdale factors.
- vi) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site and how it is laid out and used at the time of the application itself; Sumption at [27]. It appears from Sumption that the Judge considered future intended use of the land or buildings may be relevant, but in my view some care would be needed in applying this proposition to the facts of a particular case. A developer cannot change the curtilage simply by asserting that s/he intends to use the site in a particular way in the future.