



'Curtilage' is the area of ground directly connected with the functioning or inhabitation of the structure, such as a yard, a basement or a passageway to the structure

What is Curtilage?

Colm Murray goes beyond the bricks and mortar, exploring the setting of a building and its contribution to the landscape.

The Heritage Act 1995, in its definition of heritage, makes specific reference to the setting and attendant grounds of buildings, to streetscapes and urban vistas, as well as heritage gardens and parks. Many of these have strong relationships with particular individual buildings. Buildings are the focus of the human inhabitation of the landscape, the environment of man. We could say that outside the House lies the Garden, cultivated primarily for pleasure and display, beyond that the cultivated Countryside, utilised for the diversity of human purposes (food-growing, recreation, extraction of primary materials), and at the fringes of our existence lies the inhospitable Wilderness, the space of adventure, where the human presence is not dominant. So it is not surprising that when we identify buildings as having special cultural or historic value, we must inevitably be looking at something a little more extensive than the bricks and mortar; we see the relationships between the building and the space it commands in the World, the Place it creates.

Since 1999, the planning legislation gives protection to buildings included in the 'Record of Protected Structures', and the wording of the legislation extended the protection to include its 'Curtilage', the area of ground that is directly connected with the functioning or inhabitation of the structure. This protection recognises

that buildings create places, through the zones of influence that surround them and which are larger than their outer walls. It begins to address the practical necessities of protecting the values of those places along with the building. It is the first step outwards from buildings towards their landscapes and settings.

The Heritage Council seeks to clarify how to determine the curtilage of Protected Structures as a small step towards improving the way we manage our heritage holistically, and safeguard the setting of buildings as they make a contribution to landscapes. It hopes to provide observations, or indicators, to support them on the basis of Irish planning and legal cases, and to extrapolate from the principles recently established in UK court cases. It is intended to be made available on the Council's website as 'Useful Principles'. The 'advice' should not be prescriptive and would be best considered as observations rather than guidelines. The aim is to clarify for building owners what the implications of protection might be for them.

Protection of a protected structure extends to the land and structures lying within its curtilage. It is important to emphasise that curtilage refers to the land that is related to a building and that allows it to function. Thus 'curtilage' provides the legal connection between a structure, which carries and transmits the cultural value which architectural heritage legislation attempts to protect, and the land and property on which it stands, which itself has a long and complex tradition of treatment in law.

The initial research project, carried out by Mona O'Rourke, looked at case law here in Ireland, the British Isles and other common law jurisdictions, along with relevant articles and any other material relating to the subject. This was then collated into a user-friendly format as 'models of interpretation' for proposed end-users. A stakeholders group met in February 2010 to discuss the issues relating to the report. They noted the lack of discussion of the issue in deliberations on planning applications relating to protected structures – planners however, refer to 'setting', 'approaches' 'backdrop', 'views and vistas', and so on. It was also noted that the issue comes most sharply into focus when owners or occupants of protected structures seek a 'Declaration' from their planning authority regarding their protected structure. There was also an anxiety that more substantial places, such as the designed landscapes to be found in demesnes and public parks, are inadequately served by the concept.

Curtilage has its etymological roots and historical legal meaning in relation to dwellings. The observations of Judge Buckley supplies the authoritative advice for houses: *'There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house To the extent that it is reasonable to regard them as constituting one ... parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole'* (The 'Methuen-Campbell' case, 1979). This led to a judgment, in the case

of the Grymsdyke Hotel ('Skerritts', 2001), that distant subsidiary buildings, which were designed by the architect to be an integral part of the functioning of a large-scale country house when it was built, were part of the integral whole, and fell within the curtilage and were therefore protected. The scale of the curtilage varies with the functional requirements, and indeed it could be said, the architectural intentions, of the house or other principal structure. Its usage in relation to other types of protected structure presents challenges of extrapolation from this basic core meaning. It is less clear how the curtilage of a church or cathedral might be established, for example.

The high water mark for the extent of protection afforded to subsidiary buildings in its curtilage by the protection of a principal building by listing comes in the Calderdale Mill case in Yorkshire, England, where mill workers' houses were deemed to be within the curtilage of, and therefore protected alongside, a mill structure, even though the houses were separated from the mill by a bridge, and in separate ownership at the time when the case came to the attention of the court. It is interesting to note that the judge in his ruling on this case was concerned that the demolition of the houses would have an adverse impact on the mill. And, although not stated expressly in the judgment, it is clear that he considered this to be an adverse aesthetic impact. The emphasis was on an integral whole, as opposed to the 'small and necessary piece of land'. This case remains atypical of the courts' treatment of the curtilage of listed buildings or protected structures.

Curtilage has its limits. Subsidiary structures explicitly called up as being in the 'attendant grounds' of a special principal structure can be protected by virtue of their relationship with the protected structure, no matter how distant from it. The emphasis remains on the 'structure'. The architectural heritage chapter of the *Planning and Development Act* does not concern itself directly with broader aspects of heritage, for example the living things in a garden, and cannot easily be utilised to 'protect' landscape, vistas, planting, or species or habitats which may be associated with buildings but which are protected under other legislative codes. Its basic purpose is to identify the property – land and subsidiary buildings – to which the special architectural heritage protective provisions of the Act apply. It should be noted that the chapter dealing with curtilage and setting in the Department of the Environment, Heritage and Local Government's *Architectural Heritage Protection Guidelines for Planning Authorities* provides very good advice on the aspects of buildings' settings that merit careful consideration and sensitive handling for their heritage value.

Yet still there is an elusive quality of places that remains vulnerable. The designed relationships across space in a garden, demesne, streetscape or landscape, the distances traversed, the inter-visibility, the journey that might be inscribed in a landscape; all these can contain historic and aesthetic value also. Similar issues occur in the urban context. We can characterise Georgian Dublin,

its orthogonal planning, the regular rational facades, irregular building lines and heights, sumptuous interiors glimpsed at dusk at lighting-up time. But what of that distant view of the Dublin Mountains opened up by the length of Fitzwilliam Street? The way the spires of the protestant churches formed a network of navigable landmarks across the city? When we think about places this big, even the Architectural Conservation Area protective mechanism in the Planning and Development Act seem inadequate to the challenge of the management of the character and quality of places through processes of change.

Ireland's special gardens and demesnes bring the issue into focus. The setting of a building, beyond its curtilage, may inspire our admiration and need protection, or at least careful management of change. The planning system can place a high value on beautiful places, whether garden, streetscape or landscape, but even where aesthetic values are referred to in a development

plan, they remain only one of many factors which planners give consideration to in making decisions.

The clarity and categorical priority that the Planning Acts bring to the protection of special structures does not extend to an imperative to manage change with the same respect for cultural or heritage values in places that have a special importance. In moving outwards from the scale of a building to the scale of a garden, streetscape or landscape, the tools for managing change must be refashioned to deal with further complexity of policy-making. There are multiple stakeholders of the public realm. Trees and plants have life cycles of growth and decay markedly different to the unchanging quality of structures. Habitats may need precise types of ecological intervention, or conversely, to be left utterly untouched by human intervention. The Landscape Working Group of the Heritage Council is grappling with the larger holistic issues, and about which the architectural heritage protection legislation, for simplicity's sake, must remain silent.



Georgian Dublin characterised by its orthogonal planning and regular rational facades

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Curtilage: Summary of useful principles

The Irish Statutory guidance refers to the following three considerations when determining curtilage:

1. a functional connection between the structures;
2. an historical relationship between the main structure and the structure;
3. and the ownership past and present of the structures.

The study has led to the elaboration of these principles, and the addition of several new ones as follows:

1. Functional connection can be analysed into four strands:

1(a) Regard should be given to the use and function of the building and land. Whilst the term curtilage has a long legal etymology relating to houses, its use in relation to other building types relies on careful consideration of the functional requirements of the principal structure, and the need of the principal structure for a certain amount of space around it to fulfil that function.

1(b) The layout of the principal structure and other structures on the site, paying attention to the possibility that a parcel of land in single ownership might accommodate physically separate and independent occupants or functions. In an English case, the farmhouse and its farm were considered to be sufficiently distinct from each other that the farm buildings were deemed to be outside the curtilage of the farmhouse.

1(c) Whether the land near to a protected structure can be said to be so closely connected with the intended purpose of the principal structure that it forms or formed an integral part of the principal structure. Land containing a tennis court or swimming pool adjacent to a house in the country, for example, was not considered sufficiently integral to the dwellings to form part of their curtilage.

1(d) Whether a structure is ancillary, accessory or subordinate to the principal structure in both a functional and a physical sense. This concept is intuitively useful for relatively simple building types, such as houses, but is less straightforward for large factory or barracks sites. These typologies do not necessarily have a dominant building, to which all others on the site can be deemed to be subsidiary.

2. An historical relationship

Recent court decisions indicate that, whilst the historical connection or relationship between the main structure and other structure(s) has at least some importance, it is not always interpreted as providing conclusive grounds for asserting that buildings fall within the same curtilage. Recent cases emphasise the primary importance of the use of the land at the time when formal notification of

protection was given, rather than any other previous arrangement.

3. Ownership and occupation

Recent cases have found that the curtilage of a building can be smaller than the land in the same ownership as it. The way the buildings or land was occupied can determine the extent of unit of land that is needed for a particular building. The decision not to include a mews building within the curtilage of a house, because it was in separate occupancy even though it was in the same ownership as the principal house.

The cases studied highlight the following relevant considerations:

4. Size of curtilage

Size of the curtilage can present challenges in interpretation, for although a curtilage ought in principle to be small, it does not always follow that it must be so. The elaborateness of a house may affect the curtilage it commands – the *‘small court, yard or piece of ground attached to a dwelling house and forming one enclosure with it’* of the dictionary definition extends to the lawns and distant stables in the case of a country house. Where the site is as important as the structures, such as factories or barracks, it is more difficult to utilise the concept of the functional needs of the building to define how much of the space around the buildings is within its curtilage. Where there is any uncertainty as to whether or not a structure is within the curtilage of another, the appropriate action for a planning authority to take is to include the structure for protection under the *‘attendant grounds’* provision in the Planning Act.

5. Alteration of curtilage

Case law highlights the potential for a curtilage to alter, and even to expand, as the utilisation of the land around the principal structure changes – gardening a greater area of ground related to a property would increase the curtilage of the structure.

6. Constructed boundaries of protected structures

It has been found in the U.K. that any owner of land, part of which shares a common boundary with a listed building, wishing to carry out any work to a boundary feature would need to seek formal planning permission, whereas they would not need to do so if bounding a building or structure which is not listed.

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