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# Appeal Decision

Site visit made on 15 August 2023

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 1<sup>ST</sup> September 2023**

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**Appeal Ref: APP/P0240/X/22/3301078**

**1 Four Acre Drive, Wixams, Houghton Conquest, Bedford MK45 3GT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Kevin Cornes against the decision of Central Bedfordshire Council.
  - The application Ref CB/22/00929/LDCP, dated 3 March 2022, was refused by a notice dated 8 June 2022.
  - The application was made under section 192(1)(a) and (b) of the Town and Country Planning Act 1990 as amended.
  - The use and development for which a certificate of lawful use or development is sought is use of the land edged red as residential garden and 1.8m timber fence.
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use and proposed operation which is considered to be lawful.

## Application for costs

2. An application for costs was made by Mr Kevin Cornes against Central Bedfordshire Council. This application is the subject of a separate Decision.

## Procedural Matter

3. I noted on my site visit that a fence has been erected around land owned by the appellant and located to the west of his dwelling known as 1 Four Acre Drive. However, the Certificate of Lawful Use or Development (LDC) for operational development in this appeal is for a proposed fence the details of which are shown on Proposed Drawing Nos. 1321(02)01 Rev P1 and 1321(02)02 Rev P2. I have therefore determined his appeal on the basis of the proposed fence shown on those drawings.

## Main Issue

4. Section 192(2) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or began at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the

proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant an LDC was well founded.

## Reasons

### *Fence*

5. The appellant's case is that the proposed fence would not be adjacent to a highway used by vehicular traffic and is therefore permitted development under the provisions of Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 as amended (GPDO). The Council consider that the fence would be erected adjacent to a highway and would therefore conflict with Class A.1(a)(ii) of Part 2, Schedule 2, Article 3 of the GPDO.
6. Class A, Part 2, Schedule 2, Article 3 of the GPDO provides for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Class A.1 states that development is not permitted by Class A if:
  - (a) The height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed –
    - (i) For a school,...
    - (ii) In any other case, 1 metre above ground level.

Therefore, considering the fence to be erected would be 1.8m in height, in order to benefit from any planning permission granted by the GPDO as set out above, the fence must not be constructed adjacent to a highway used by vehicular traffic.

7. The proposed fence would be adjacent to a footpath that links Four Acres Drive to Summerhill Place. However, it is a pedestrian footpath only and not a highway that is used by vehicular traffic. The nearest highway used by vehicular traffic to the proposed fence is Four Acre Drive. The fence would be constructed at right angles to Four Acre Drive, thus only the end fence post would front towards Four Acre Drive. Furthermore, between the proposed location of the end fence post and the kerb to the carriageway of Four Acre Drive, there is a strip of planting, a three metre wide pedestrian footway and a two metre wide grass verge. Consequently, the proposed fence and nearest fence post are sufficiently distant from the highway that as a matter of fact and degree it would not be adjacent to a highway used by vehicular traffic.
8. I have had regard to the Council's view that the fence is part of the existing fence that fronts towards Four Acre Drive. However, the application before me is an application under s192(1) of the Act. The proposal is for a new fence, a single operation that would be separate to and not attached to the existing fence which fronts onto Four Acre Drive.
9. I have also had regard to the appeal decision referred to by the Council in their officer report<sup>1</sup>. However, in that case the proposed wall and gates formed the boundary between the back of the verge at the side of a highway used by vehicular traffic and the appellant's garden area. The height and the length of

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<sup>1</sup> APP/Q3115/X/16/3150593

the wall in that case were perceived as the main boundary between the highway and appellant's property. In this case the proposed fence would form the main boundary between the appellant's property and the pedestrian footpath leading to Summerhill Place. It has been established that this is not a highway used by vehicular traffic and thus the decision is not directly comparable to this appeal case.

10. For the reasons given above I conclude that the proposed 1.8m would be permitted development for the purposes of Class A, Part 2, Schedule 2, Article 3 of the GPDO.

### *Residential use of Land*

11. The appellant wishes to establish that it would be lawful to use the land which is within his ownership and situated between the flank wall of his property, No 1 Four Acre Drive and the pedestrian walkway to Summerhill Place, as residential garden. The Council contend that this land is "amenity land" and that the proposed residential use of it would be a material change in its use which would require planning permission.
12. There is no dispute that the land is in the appellant's private ownership. From the evidence before me it forms part of a wider site which was granted outline planning permission in July 2012 for residential use of the land, and subsequent reserved matters approval for 120 residential units along with all associated infrastructure. The approved external works layout drawing dated September 2019<sup>2</sup>, which forms part of the approved residential development, shows that the rear garden to 1 Four Acre Drive (Plot 10) would be enclosed by a brick wall. The parcel of land adjoining the flank wall of Plot 10 and the subject of this appeal is shown as unenclosed. However, I have not been provided with any substantive evidence to demonstrate that the use of this unenclosed piece of land (the proposed residential garden) has been restricted by any planning conditions or legal agreement which would require it to be accessible to the public or retained as "amenity" land as part of an adopted landscape or other scheme.
13. I appreciate that it may have been the local planning authority's intention for this land to remain unenclosed and as "amenity land". However, in the absence of any conditions that would restrict the use of the unenclosed land, nor a planning obligation securing it as public open space or use for any other purpose, its lawful use is residential. The outline planning permission granted a residential use of the land and there have been no further permissions granted for a material change of use or conditions/obligations imposed to restrict its use as such. As a matter of fact and degree, and on the balance of probability, the use of the land as a private residential garden would not be a material change of use from its lawful residential use.

### **Overall Conclusion**

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of the land edged red as residential garden and a 1.8m timber fence at 1 Four Acre Drive, Wixams, Houghton Conquest, Bedford MK45 3GT was not well founded and the appeal

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<sup>2</sup> External Works Layout, Drawing No. 893-06-02 Rev 8

should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*Elizabeth Pleasant*

INSPECTOR



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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 3 March 2022 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use of the land as residential garden would not be a material change of use from its lawful residential use for which outline planning permission was granted in 2012, with reserved matters for 120 residential units along with associated infrastructure for parcel 4.3 within village 4, subsequently granted on 30 November 2018.

The proposed 1.8m fence is "permitted development" falling within Class A of Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

*Elizabeth Pleasant*

INSPECTOR

Date

Reference: APP/P0240/X/22/3301078

## **First Schedule**

1. Proposed use of the land identified in red as residential garden (as shown on Proposed Plan 1321(02)01 Rev P1).
2. Proposed 1.8m high fence (as shown on Proposed Drawing Nos. 1321(02)01 Rev P1 & 1321(02)02 Rev P2).

## **Second Schedule**

Land at 1 Four Acre Drive, Wixams, Houghton Conquest, Bedford MK45 3GT

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Plan

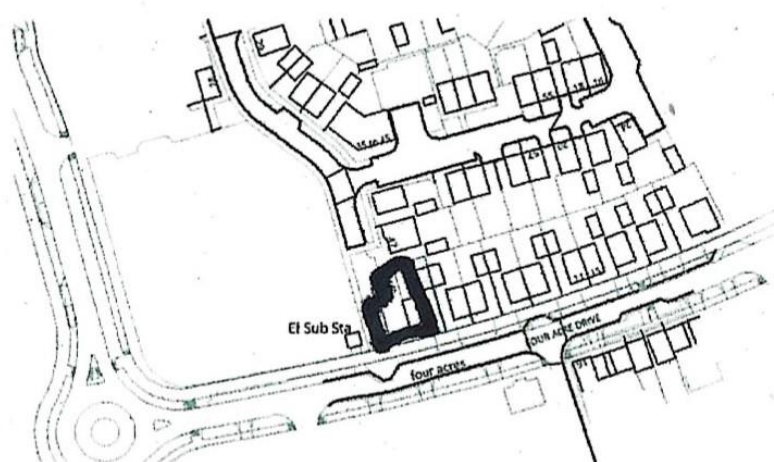
This is the plan referred to in the Lawful Development Certificate dated:

**by E Pleasant BSc (Hons) DipTP MRTPI**

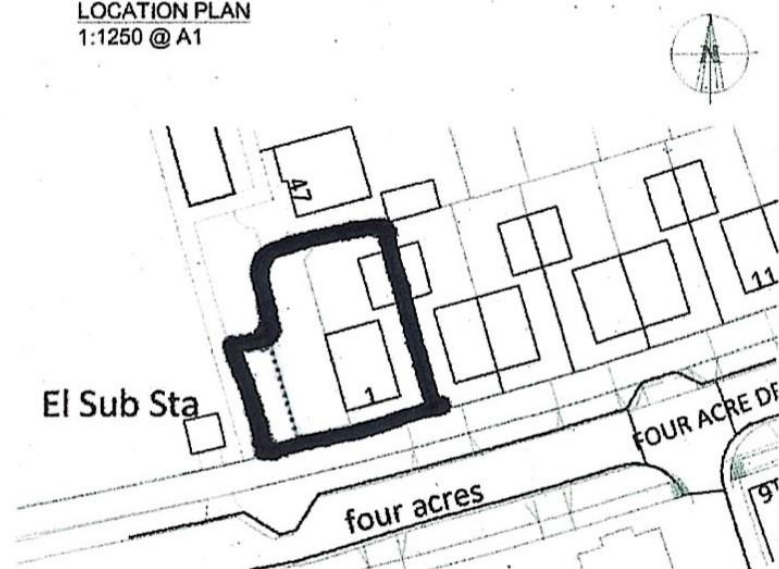
**Land at: 1 Four Acre Drive, Wixams, Houghton Conquest, Bedford MK45 3GT**

**Reference: APP/P0240/X/22/3301078**

Scale: Not to Scale



LOCATION PLAN  
1:1250 @ A1



BLOCK PLAN  
1:500 @ A1