



Appeal Decision

Site visit made on 10 December 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 19 December 2025

Appeal Ref: APP/P0240/X/25/3363102

Cobblers Gold, Mancroft Road, Aley Green, Luton, Bedfordshire LU1 4DG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Tony Meakes against the decision of Central Bedfordshire Council.
 - The application ref CB/25/00021/LDCP, dated 3 January 2025, was refused by notice dated 4 February 2025.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The development for which a certificate of lawful use or development is sought is development comprising the erection/construction of a wall (means of enclosure).
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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 operation which is found to be lawful.

Preliminary Matters

2. The application was made under section 192(1)(a) of the 1990 Act which seeks to establish whether the proposed use would be lawful. Section 192(2) sets out that if on application under this section, the Local Planning Authority is provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect. In any other case they shall refuse the application.
3. Planning merits form no part of the assessment of an application for a certificate of lawful use or development which must be considered in the light of the facts and the law. The onus is firmly on the applicant (appellant) to demonstrate that, on the balance of probabilities, the proposed development would be lawful.
4. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.

Main Issue

5. The main issue is whether the Council's refusal to issue a certificate of lawful development was well-founded.

Reasons

6. An application for a certificate of lawful use or development is determined in relation to the development sought by the applicant. In this case the description of the works is solely for operational development, specifically the erection/construction of a wall as a means of enclosure that would be no more than 1 metre in height and would extend along the full width of the property frontage.
7. Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) provides that planning permission is granted for the classes of development described as permitted development in Schedule 2. Schedule 2, Part 2, Class A of the GPDO records as permitted development the erection, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to various limitations.
8. Class A.1 (a) (ii) restricts the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic to 1 metre above ground level. A.1 (b) restricts the height of any other gate, fence, wall or means of enclosure erected or constructed to 2 metres above ground level. The proposed wall would be adjacent to a highway and would not exceed 1 metre in height and so would fall within the necessary parameters.
9. The proposed wall would enclose the existing hedge and establish a new boundary along the front of the property. It would be positioned on land that presently lies outside the appellant's defined garden area and which, on the evidence before me, appears to function as part of the public footway. This section of footway comprises a paved pedestrian route flanked by grassed verges on either side. The wall would be sited on the inner grassed strip.
10. Although it may well be that the land falls within the appellant's ownership, its lawful use has not been established, though it is clearly outside of the residential curtilage and is likely, so far as I can see, to have been used as amenity land associated with the public highway for some time. It is the Council's view that the land is public highway land.
11. No definitive documentary evidence has been submitted to demonstrate whether or not the land was expressly intended to form part of the public highway. The highway plan provided by the appellant offers limited clarity and does not enable firm conclusions to be drawn in this respect. Furthermore, there is no information before me regarding responsibility for maintenance of the land, nor any evidence of restrictions or rights of access that may apply to it.
12. The Council consider that the enclosure of the land with the residential property would constitute an unauthorised material change of use of the land. They refer to GPDO Article 3(5) which provides that the deemed permission granted by GPDO Schedule 2 does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful. They argue that since the use of the land as residential land would be unlawful, the wall cannot benefit from the permitted development rights conferred by the GPDO.
13. They have referred me to an appeal decision (ref. APP/W4515/X/24/3339867) which supports that view. However, the Secretary of State has conceded in the

case of *South Darenth*¹ that the permission granted by Class A is not a permission “granted in connection with an existing use”. The use of the land does not therefore prevent the applicant/appellant from relying upon Class A.

14. I therefore conclude that the operational development as proposed falls within the scope of permitted development granted by Schedule 2, Part 2, Class A of the GPDO. Its lawfulness is not contingent upon the present use of the land, nor upon whether the land lies within the curtilage of the dwellinghouse. Nevertheless, any material change of use of the land may constitute development requiring express planning permission from the Local Planning Authority. Such matters are distinct from the proposal before me, which relates solely to the operational development of erecting a wall. Accordingly, the issuing of a certificate in respect of the wall would not preclude the Council from taking enforcement action should the appellant carry out any further development, such as a material change of use, without the necessary planning permission.

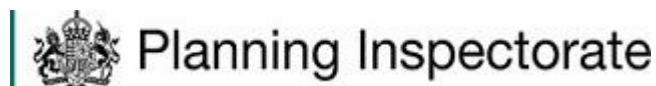
Conclusion

15. For the reasons given above, I conclude on the evidence available that the Council's refusal to grant a certificate of lawful use or development for a wall up to 1 metre tall is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

S A Hanson

INSPECTOR

¹ *South Darenth Farms and Cold Store Co. Ltd v SSHCLG and Anor.* [2025] EWHC 2646 (Admin)



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

IT IS HEREBY CERTIFIED that on 3 January 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed erection/construction of a wall (under 1 metre in height) along the frontage of the property would be permitted development pursuant to Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Signed

S A Hanson

Inspector

Date 19/12/2025

Reference: APP/P0240/X/25/3363102

First Schedule

The erection/construction of a wall (means of enclosure).

Second Schedule

Land at Cobblers Gold, Mancroft Road, Aley Green, Luton, Bedfordshire LU1 4DG

IMPORTANT NOTES – SEE OVER

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 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, 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 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

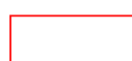
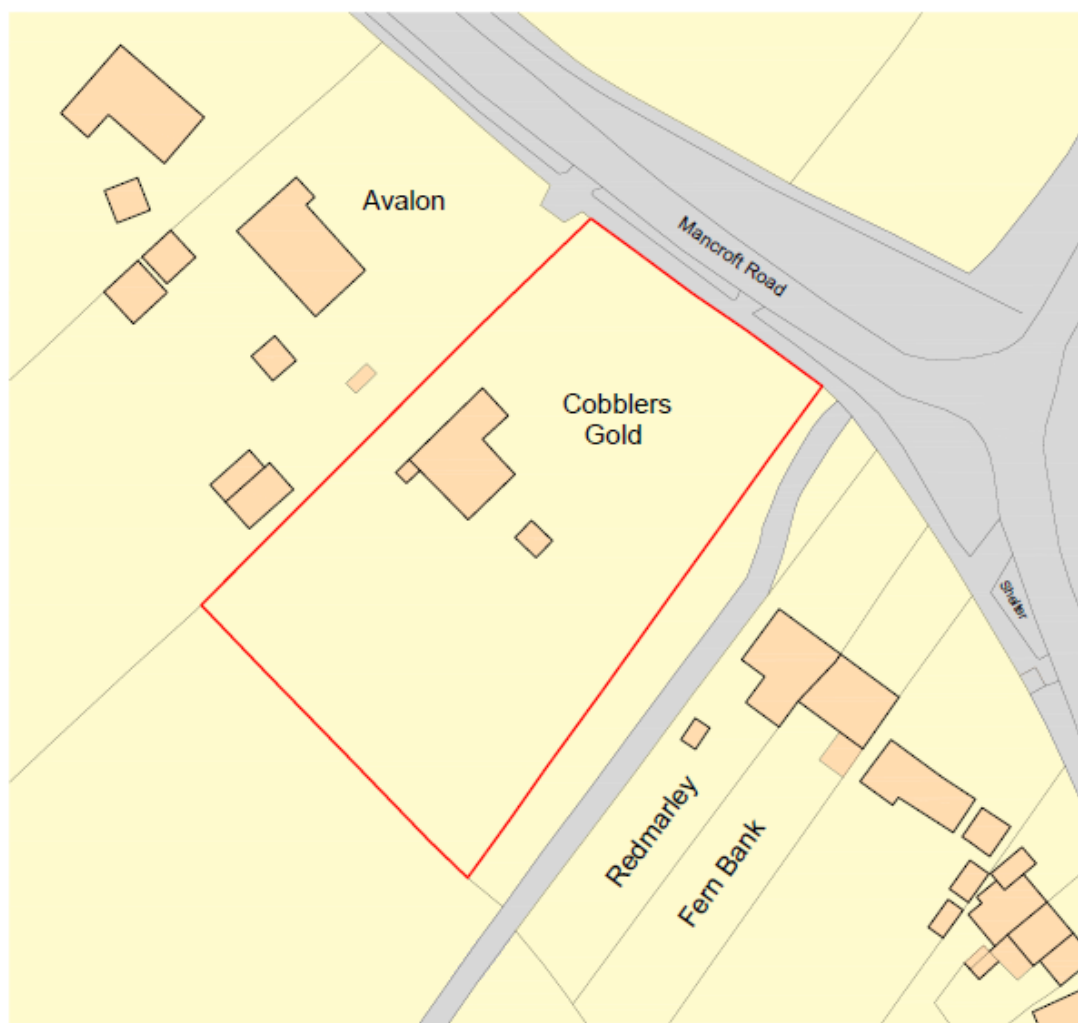
This is the plan referred to in the Lawful Development Certificate dated 19/12/2025

by **S A Hanson BA(Hons) BTP MRTPI**

Land at: Land at Cobblers Gold, Mancroft Road, Aley Green, Luton, Bedfordshire LU1 4DG

Reference: APP/P0240/X/25/3363102

Scale: Not to Scale



Site 3795 sq m



1:1250@A4