

Case No. ENF/15/00041/UDUR

Grid Ref: 283407 100124

Address:

Clouds, Barnfield, CREDITON, Devon

Alleged Breach:

- 1) Without planning permission, the carrying out of engineering works to raise the ground level at the north eastern boundary
- 2) Erection of close boarded fence close to the boundary, alleged to be above the 2 metre permitted development height.

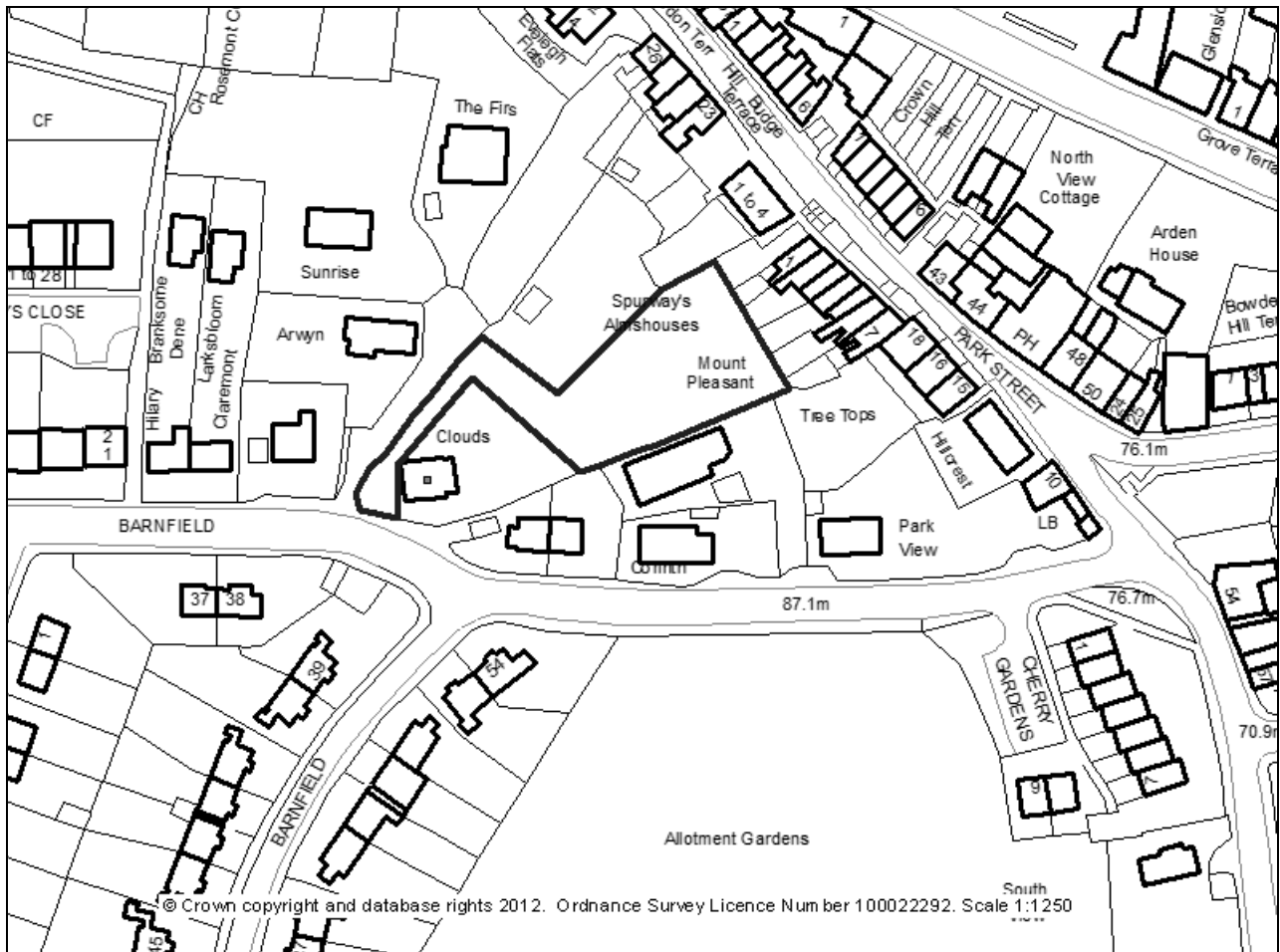
Recommendation: That the Legal Services Manager be authorised to take no further action in respect of either the engineering works carried out or the erection of the fence.

Site Description:

Clouds, Barnfield, CREDITON, Devon

This is a building site at the rear of Clouds backing onto properties in Mount Pleasant, Park Street. The site is on a north facing slope and was formerly an orchard.

Site Plan:



Site History:

05/00939/OUT	Outline for the erection of 3 no. two-storey dwellings (revised site boundary)	PERMIT
07/02064/ARM	Reserved Matters for the erection of 2 dwellings following Outline planning permission 05/0939/OUT	PERMIT
08/01372/ARM	Reserved Matters for the landscaping of 2 dwellings following Outline Approval 05/00939/OUT	PERMIT

Development Plan Policies:

National Planning Policy Framework

Reasons/Material Considerations

The development on the site at the rear of Clouds has been ongoing since outline permission was granted in 2005. This was for three properties. Since then, Reserved Matters permissions have been granted and one plot was sold separately and was developed as an individual plot following planning permission in 2010.

The site is on a northern sloping piece of land with properties at Mount Pleasant, Park Street, on its north eastern boundary. The two houses are nearing completion and work on landscaping the gardens has begun. The approved plan for the layout and landscaping of the development plots shows a new hedgerow to the north eastern site boundary. It is understood that the developers intend that this be planted in accordance with the approved plans.

The developers began the construction of a wooden close-boarded fence along the north eastern boundary and at one point placed horizontal boarding along the base of the fence and backfilled behind the fence with soil to a height of some 400 - 600mm. Following a complaint, your officers attended and arranged for the backfilling to be removed and for the height of the fence to be taken from the base of the horizontal boarding. The developer also agreed to building the fence to no more than 1.8 metres in height although the approved 1:500 block plan shows a close boarded timber fence to a maximum of 2 metres along this north eastern boundary.

From the garden of the adjoining property, soil could still be seen piled against the wire fence. It is your officers' contention that the original wire fence forming the property boundary is at a lower level than the wooden fence erected on the development side of the boundary. This is because of the slope of the ground and the effect of the soil going down the slope to rest against the fence would be to raise the level at that point.

Following a further complaint, a Planning Enforcement Officer, accompanied by an Officer from Building Control, attended the site and surveyed the levels of the ground at the boundary, using figures from a survey submitted with the original outline application and using, as a datum point, an inspection cover that existed on the land at the time of the original survey and against which a height had been recorded. The results of this latest surveyed suggested that the timber fence had been built at or below the natural ground level and that it does not exceed the maximum 2 metre

height limit. Whilst there appears to be some soil against the wire property boundary fence in places this varies in height between approximately 0.2 – 0.4m. This is considered de minimis and not to constitute an engineering operation for which planning permission would be required. At this point in time, your officers have no reason to believe that there is any breach of planning control and would recommend that Members resolve to take no further action.

In addition, it has been alleged that the build-up of earth is causing potential damage to trees in the neighbouring garden. The neighbouring garden is in a Conservation Area and as such, anyone who cuts down, uproots, tops lops, wilfully destroys or wilfully damages a tree in a Conservation Area, or causes or permits such work, without giving a Sec 211 notice is guilty of an offence. In this instance, your officers are of the opinion that there is nothing to suggest that the soil build-up has been done wilfully and if it were removed from the base of the trees the problem would not exist. This is something that could be resolved between the two land owners as a civil matter. At the time of writing, there is no evidence to suggest that damage has occurred. The trees themselves do not appear to warrant consideration of a Tree Preservation Order and were an application made to remove the trees, it is likely to be permitted. The Council's Tree Officer is arranging to visit the site. Any update as a result will be reported verbally at the meeting.

Options for action or remedy:

The list of options available is as follows:

Take no further action - It is your officers' view that it would not be appropriate or proportionate to take action in this case, based on the reasons given under Reasons/Material Considerations.

Invite an application to grant consent to regularise the development – Following an initial complaint, the owner of the site has carried out remedial work to the extent that there is no longer, in your officers' opinion, any development that requires planning permission. Therefore, it would not be appropriate to request an application.

Issue an Enforcement Notice seeking the removal of any soil at the boundary back to the natural ground level and the reduction in height of the fence erected to a maximum height of 2 metres – It is your officers' opinion that the soil at the boundary is purely incidental to the landscaping operations undertaken and do not in themselves amount to development, against which a Notice could be served and the height of the fence as measured, is less than 2 metres in height.