

Case No. ENF/15/00041/UDUR

Grid Ref: 283393 100120

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 boundary, alleged to be above the 2 metre permitted development height.

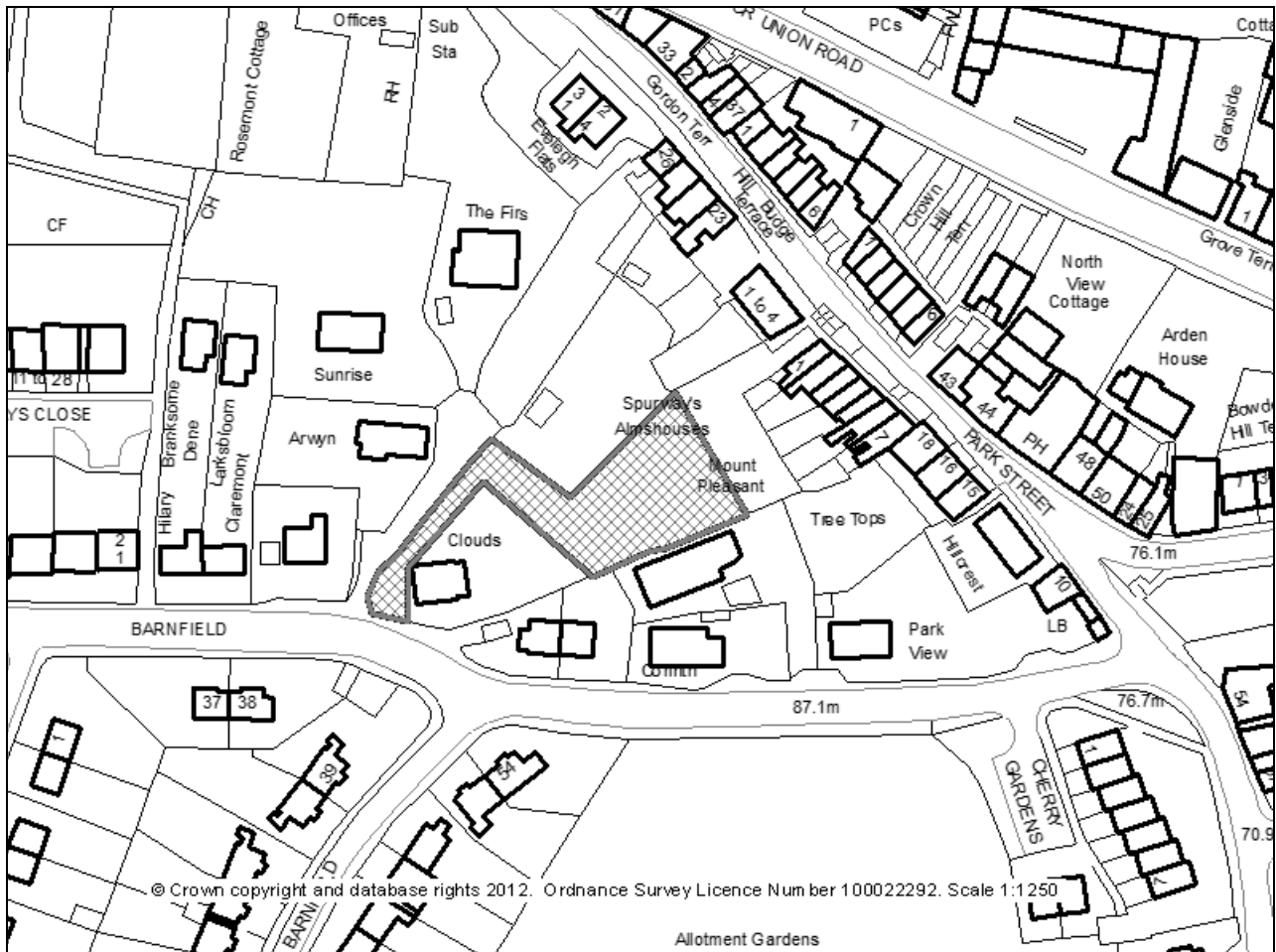
Recommendations:

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

Site Plan:



Site History:

04/00984/PE	Housing development	REC
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
08/00353/PE	Proposed dwelling	REC
08/01372/ARM	Reserved Matters for the landscaping of 2 dwellings following Outline Approval 05/00939/OUT	PERMIT
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
03/01128/OUT	Outline for the erection of one dwelling and formation of associated access	PERMIT
05/01121/FULL	Erection of 1 no. dwelling and self contained annexe	REFUSE
05/02591/FULL	Erection of a dwelling with annex under (Revised Proposal)	PERMIT
07/00150/FULL	Erection of 1 dwelling with annex	PERMIT
07/01219/FULL	Variation of condition 4 of Planning Permission 07/00150/FULL to allow use of different brick type	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
08/01658/OUT	Outline for the erection of 1 dwelling	PERMIT
10/01200/FULL	Erection of 1 dwelling with garage and associated parking	PERMIT

NON-MATERIAL AMENDMENT GRANTED 5TH
APRIL 2011
NON-MATERIAL AMENDMENT AMENDMENT
GRANTED 6TH MAY 2011

10/01200/FULL/ NMA	Erection of 1 dwelling with garage and associated parking	PERMIT
10/01200/FULL/ NMAA	Erection of 1 dwelling with garage and associated parking	PERMIT
07/02064/ARM/N MA	Reserved Matters for the erection of 2 dwellings following Outline planning permission 05/0939/OUT - Non-Material Amendment for the replacement of rendered balustrade with glazed balustrade to Plot A	PERMIT
07/02064/ARM/N MAA	Reserved Matters for the erection of 2 dwellings following Outline planning permission 05/0939/OUT - Non-Material Amendment to replace paved area of driveway with porous tarmac	WDN
15/00059/FULL	Change of levels and surface finish of driveway	PERMIT

Development Plan Policies:

National Planning Policy Framework

Reasons/Material Considerations:

Members who were present at the Planning Committee meeting of 22nd April 2015, will recall that it was resolved to defer any decision until such time as further enquiries were made to try to establish what, if any breach exists on the site. Concern had been shown that the inspection cover used to survey the site may have been raised, giving a false level from which to establish ground heights.

Following that decision, a site visit was carried out on 24th April. It was found that the old inspection cover had been replaced and it was not possible to lift the cover to examine the chamber regarding the height. A second visit was carried out on 8th May when it was possible to lift the new cover. Unfortunately, work had been done to the chamber, which rendered it impossible to show where the original may have been.

Irrespective of that, your officers' remain convinced that at the time they initially took level readings the original cover had not been raised. However as work has now been done to that chamber but it does now mean that we have no realistic way of establishing a breach.

The development site owners have always maintained that the ground at the boundary did drop away more steeply than the general slope of the land. The survey carried out by Enforcement and Building Control indicated that the levels at the fence were lower than shown on the 2005 survey for the outline permission.

Since the last report, Officers understand that arrangements have been made to remove some of the soil against the neighbours' fence as part of an argument between the developer and the affected house holder. This will go towards resolving some of the problem.

A second survey report from 2008 has also been produced and used to check the ground height from the neighbouring garden in Mount Pleasant. In the area of Kirton View, the southern plot, the results corroborated those of the previous check, indicating that the levels were lower than shown on the survey.

Your officers are still firmly of the view that we cannot establish a breach of planning control on the site and that, therefore, no further action should be taken in this instance.

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. It is your officers' opinion that this is a matter that should be resolved civilly between the owners of the two properties. The soil build-up has occurred incidentally to the landscaping carried out and would not be considered to be development.

Options for action or remedy:

The list of options available is as follows:

Take no action:

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.

