

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: LU/329/17/CLP

LOCATION: 47 Linnet Close
Littlehampton

PROPOSAL: Lawful development certificate for a proposed fence extension.

DESCRIPTION OF APPLICATION

This application indicates the enclosure of all of the land to the east of the present fence line into the garden of no.47. This would be achieved by the erection of panel fencing almost at the edge of the metalled surface of this part of the garage court, with a small margin between it and the garage court. The new fencing would have a concrete panel base with fencing above and would be approximately 1.8m in height.

The applicant advises that the reason for seeking to enclose the land is the planting grows so quickly (1.8m per year) and is a nuisance to a neighbour who has the parking space adjoining the planting. The applicant also advises that their neighbour had all of the planting, including trees, removed and has also sprayed weed killer which has destroyed anything which would have grown back. The applicant further advises that clearance of the planting has resulted in loss of privacy to their rear garden and considers that this has left the area looking unkempt, also that fly tipping occurs.

The applicant proposes to leave a 0.5m margin outside of the proposed fencing to allow for visibility. They consider that the proposal is the only resolution to the situation.

DESCRIPTION OF SITE AND SURROUNDINGS

The land concerned in this application is presently land which is located outside of the fenced residential garden area the application dwelling. No.47 is one of a pair of semi-detached dwellings located within an estate type development. The land to be enclosed is located to the east (rear/side) of the rear garden of the existing dwelling and outside of the existing fence line enclosing its rear garden area. It is situated between the metalled surface of a small garage court and the existing garden fence of no.47. The land has clearly at some recent point been landscaped in a similar manner to other land which is still landscaped and is located to the rear of nos. 47 and 48. It is evident that the application land has had the landscaping cut down and the material that remains appear to be dead.

RELEVANT SITE HISTORY

Outline planning permission for this development was granted under LU/224/98. This application was allowed on Appeal. No condition was imposed which restricted the erection of fencing by means of taking away permitted development rights and no such condition was subsequently imposed on any reserved matters application.

REPRESENTATIONS

Representations received:

No representations received.

Comments on Representations received:

N/A

CONSULTATIONS

Consultations responses received:

No consultees.

Comments on Consultation responses:

N/A

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this 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 begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

In this instance the proposal will be assessed against:

1. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) under Schedule 2, Part 2 Minor Operations, Class A, which pertains to there erection of Gates, Fences, Walls, Etc.
2. The Town and Country Planning (Use Classes) Order 1987 (as amended), which pertains to the authorised use of premises and/or land.

Provided the proposed enclosure of the land and the erection of the fencing satisfy the relevant criteria, and that no restrictive conditions to development have been imposed on the site, the proposed works will constitute Permitted Development and would not require planning permission. If the works fail to accord with the criteria then planning permission will be required for them to take place.

CONCLUSIONS

The key issues here are:

1. Whether there is a condition on the original planning permission for the development which prevents the erection of fencing without an application for planning permission and whether planning permission is required for the new fencing.
2. Whether the enclosure of the land results in a material change of use of land for which planning permission is required.

1 - Whether there is a condition on the original planning permission for the development which prevents the erection of fencing without an application for planning permission and whether

planning permission is required for the new fencing.

Outline planning permission for this development was granted under LU/224/98. This application was allowed on Appeal. No condition was imposed which restricted the erection of fencing by means of taking away permitted development rights and no such condition was subsequently imposed on any reserved matters application. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) under Schedule 2, Part 2 Minor Operations, Class A is therefore still in operation for this development and fencing may be erected up to a height of 2m without the need to apply for planning permission for the fencing.

In this case, the fencing proposed is approximately 1.8m in height and does not exceed 2m in height. Planning permission is not therefore required for the erection of the fencing.

2 - Whether the enclosure of the land results in a material change of use of land for which planning permission is required.

The land which it is proposed to enclose does not form a part of the residential curtilage of no.47. The land forms a part of the amenity landscaping within the development as a whole. It is not and was not intended to be residential land and is located outside of the defined (fenced) boundary of no.47. It clearly serves a separate and public function, not a residential one. The land is clearly not residential in character in the context of having a domestic garden type character.

It is therefore the case that what is proposed is a material change of use, this being from landscaped amenity open space land (sui generis) to the curtilage of a residential dwelling (Class C3). Planning permission is therefore required for a change of use.

RECOMMENDATION

PP REQUIRED

The Arun District Council hereby certify that on 28th November 2017 that the proposed enclosure of landscaped amenity open space proposed in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, would not be lawful within the meaning of section 192 of the Town & Country Planning Act 1990 and planning permission is required for the following reason:

The proposed fence erection would result in a material change of use from landscaped amenity open space land (Sui Generis Use) to land forming a part of the curtilage of a residential dwelling (Use Class C3) for which planning permission is required.

The fencing proposed is approximately 1.8m in height and does not exceed 2m in height. Planning permission is not therefore required for the erection of the fencing as it satisfies the requirements of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) under Schedule 2, Part 2 Minor Operations, Class A and fencing may be erected up to a height of 2m without the need to apply for planning permission for the fencing.

FIRST SCHEDULE

The development proposed is the erection of fencing to enclose landscaped amenity open space proposed to form a part of the existing curtilage of a residential dwelling as shown on the drawing submitted with the application, including:

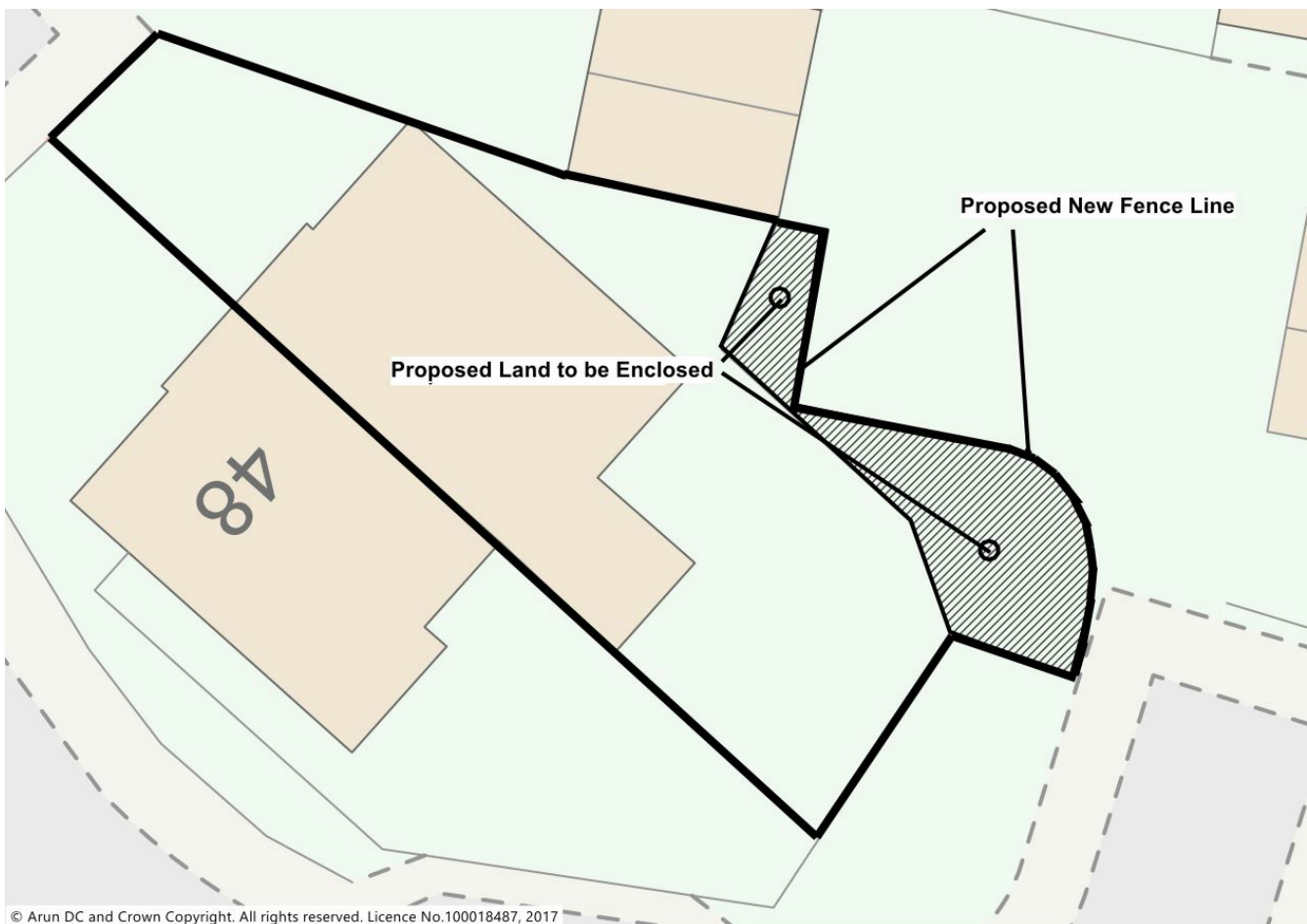
- Drawing Number Con 73 indicating land to be enclosed coloured green and proposed fence location.
- Various photographs of land to be enclosed.
- Photograph of proposed fencing.

SECOND SCHEDULE

47 Linnet Close, Littlehampton, West Sussex BN17 7GW

EXTENT OF USE

The land shown hatched in black on the drawing attached to this decision.



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and may lead to prosecution or civil proceedings. Arun District Council 100018487.