

Supporting Statement

Submitted in support of:

Certificate of lawfulness of existing use or development
for use of land as domestic garden and boundary fence.

Land r/o 40 and 42 Farrington Crescent,
Lincoln,
Lincs,
LN6 0YG.



This Supporting Statement has been produced by Fytche-Taylor planning Ltd to supplement a Certificate of lawfulness of existing use or development for use of land as domestic garden and boundary fence at land r/o 40 and 42 Farrington Crescent, Lincoln.

Project:	Land r/o 40 and 42 Farrington Crescent, Lincoln, LN6 0YG. Certificate of lawfulness of existing use or development for use of land as domestic garden and boundary fence.		
Client:	Mr M Peak.		
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1.0 INTRODUCTION

1.1 This supporting statement has been prepared by Fytche-Taylor Planning Ltd to supplement a Certificate of lawfulness of existing use or development for use of land as domestic garden and boundary fence at land r/o 40 and 42 Farrington Crescent, Lincoln.

1.2 The application for the Lawful Development Certificate is made under the provisions of section 191 of the Town and Country Planning Act 1990.

1.3 The application is submitted concerning two separate elements:

- Part A relates to the use of land as domestic garden; and,
- Part B relates to the erection of a boundary fence.

1.4 The purpose of this document is to present an overview of the relevant information relating to the use of land and boundary fence together with the relevant considerations to confirm the lawfulness of these elements.

1.5 This application is supported by plans and reports detailed within the table below.

Document	Author
Site Layout/Location Plans (A2-01)	Fytche-Taylor
Use of Land as Domestic Garden Evidence Document	Fytche-Taylor
Erection of Boundary Fencing Evidence Document	Fytche-Taylor

2.0 KEY PLANNING CONSIDERATIONS

2.1 The application for the Lawful Development Certificate is made under the provisions of section 191 of the Town and Country Planning Act 1990.

Relevant Planning Legislation

2.2 Section 191 of the Town and Country Planning Act 1990 sets out that:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then 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

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

2.3 Section 171(B) of the Town and Country Planning Act 1990 sets out that:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach

3.0 ASSESSMENT

- 3.1 The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
- 3.2 Decisions on such applications are purely a test of the evidence available to the Council. The merits of the use in land use planning terms, and the planning policies of the Council, are not relevant to the consideration of such applications.
- 3.3 The onus is on the applicant to supply evidence, and the relevant test of the evidence is the “balance of probability” (rather than the stricter ‘beyond a reasonable doubt’ test used in criminal cases).
- 3.4 Case law¹ has firmly established that the applicant’s evidence does not need to be corroborated by independent evidence to be accepted. However, if the Council has no evidence of its own to contradict or undermine the applicant’s version of events there is no good reason to refuse an application provided that the applicant’s evidence is sufficiently precise and unambiguous. When granting an application, it is necessary to define the extent of lawful use that is being acknowledged, and the land to which the certificate applies.

Main Consideration

- 3.5 In accordance with s.191 and s.171(B) Town and Country Planning Act 1990 the main considerations for the application are as follows:

Part A - Whether there is evidence that shows on the balance of probability that a change of use to domestic garden occurred in excess of 10 years prior to the date of this application.

Part B - Whether there is evidence that shows on the balance of probability that the boundary fencing was erected in excess of 4 years prior to the date of this application.

¹ **F.W. Gabbittas v SSE and Newham LBC [1985] J.P.L. 630**

Part A – Use of Land as Domestic Garden

- 3.6 This section should be read in conjunction with the 'Part A - Use of Land as Domestic Garden Evidence Document'.
- 3.7 The area of land in question is edged red on drawing A2-01, located to the rear of No's 40 and 42 Farrington Crescent.
- 3.8 The area of land was purchased in two separate transactions and therefore the land falls within two separate titles. The area of land to the rear of No.40 (Title LL6980) was purchased first, in June 1991. The area of land to the rear of No.42 (Title LL186286) was purchased subsequently in May 2000. Items 1-6 of the evidence document provide the official land registry details providing confirmation of the title transfer to the applicant.
- 3.9 Following the purchase of the land, the site was enclosed with fencing and only to be used as garden land, a requirement of the Third Schedule (see Item 3) and Restrictive covenant 3 (see Item 6). Following the erection of the boundary fencing around the entire site in 2000 (following the purchase of LL186286), the site has formed part of the domestic curtilage of 40 Farrington Crescent and has been used continuously within that period as domestic garden land.
- 3.10 Item 7 depicts images from Google Streetview dating from May 2009 and September 2012. These images clearly depict the site enclosed with boundary fencing, with domestic garden paraphernalia present (such as a garden shed) located within the area of land. Item 8 depicts the current condition of the site.
- 3.11 These events are corroborated by the applicant's statement.
- 3.12 The change of use of the land to domestic garden would be exempt from enforcement action (s171B of the Act) and would be lawful under s191(2) after the end of the period of ten years beginning with the date of the breach.
- 3.13 The evidence indicates that a change of use to domestic garden land occurred c.23 years preceding the date of this application. There have been no alternative uses during that period and the land has been used continuously as garden land.

Part B – Erection of Boundary Fence

- 3.14 This section should be read in conjunction with the 'Part B - Boundary Fencing Evidence Document'.

- 3.15 The location and elevation of the boundary fencing is depicted on drawing A2-01, located adjacent to Rochester Drive.
- 3.16 The entire site was enclosed with fencing following the purchase of LL186286. The erection of fencing was a requirement of the Third Schedule and Restrictive covenant 3 (see Item 3 and 6 of Part A Evidence Document). Item 1 depicts images from Google Streetview dating from May 2009 and September 2012. These images clearly depict the site enclosed with the 1.6m high boundary fencing adjacent to Rochester Drive. The fence has not been replaced since the last dated image in 2012. Item 2 depicts the current appearance of the boundary fencing.
- 3.17 These events are corroborated by the applicant's statement.
- 3.18 The erection of the fencing adjacent to Rochester Drive would be exempt from enforcement action (s171B of the Act) and would be lawful under s191(2) after the end of the period of four years beginning with the date of the breach.
- 3.19 The evidence indicates that the fencing was erected at least in excess of 14 years (from May 2009) preceding the date of this application. The fencing has not been replaced or altered since its erection.

4.0 CONCLUSION

- 4.1 This supporting statement has been prepared by Fytche-Taylor Planning Ltd to supplement a Certificate of lawfulness of existing use or development for use of land as domestic garden and boundary fence at land r/o 40 and 42 Farrington Crescent, Lincoln
- 4.2 Part A – On the evidence and facts submitted before the Council, it is considered on the balance of probability that land edged red on drawing A2-01 has been used as domestic garden land for over ten years and that the time for enforcement action has expired. The use of the land is therefore lawful for planning purposes.
- 4.3 Part B - On the evidence and facts submitted before the Council, it is considered on the balance of probability that the fencing depicted on drawing A2-01 shown in the location as annotated adjacent to Rochester Drive has been erected for over four years and that the time for enforcement action has expired. The fencing is therefore lawful for planning purposes.