
Committee Date:	02/09/2021	Application Number:	2019/03339/PA
Accepted:	17/04/2019	Application Type:	Proposed Lawful Use/Development
Target Date:	03/09/2021		
Ward:	Sutton Four Oaks		

Ladywood Road, Bracebridge Road, Hartopp Road,, Wentworth Road and Luttrell Road, Four Oaks, Sutton Coldfield, Birmingham, B74 2SN

Application for a Certificate of Lawfulness for the proposed installation of 8 no. vehicle access control gates

Recommendation

Section 191 / 192 Required (Certificate Refused)

1. Proposal

1.1. This application for a Lawful Development Certificate under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) relates to the proposed erection of 8no. 1.95m high side-opening gates across several existing roads on the Four Oaks Estate: Ladywood Road, Bracebridge Road, Hartopp Road, Wentworth Road and Luttrell Road. The proposed locations are as follows:

- Location 1: Hartopp Road North entrance
- Location 2: Luttrell Road North entrance
- Location 3: Ladywood Road North entrance
- Location 4: Wentworth Road North entrance
- Location 5: Bracebridge Road East entrance
- Location 6: Wentworth Road South entrance
- Location 7: Ladywood Road South entrance
- Location 8: Hartopp Road South entrance

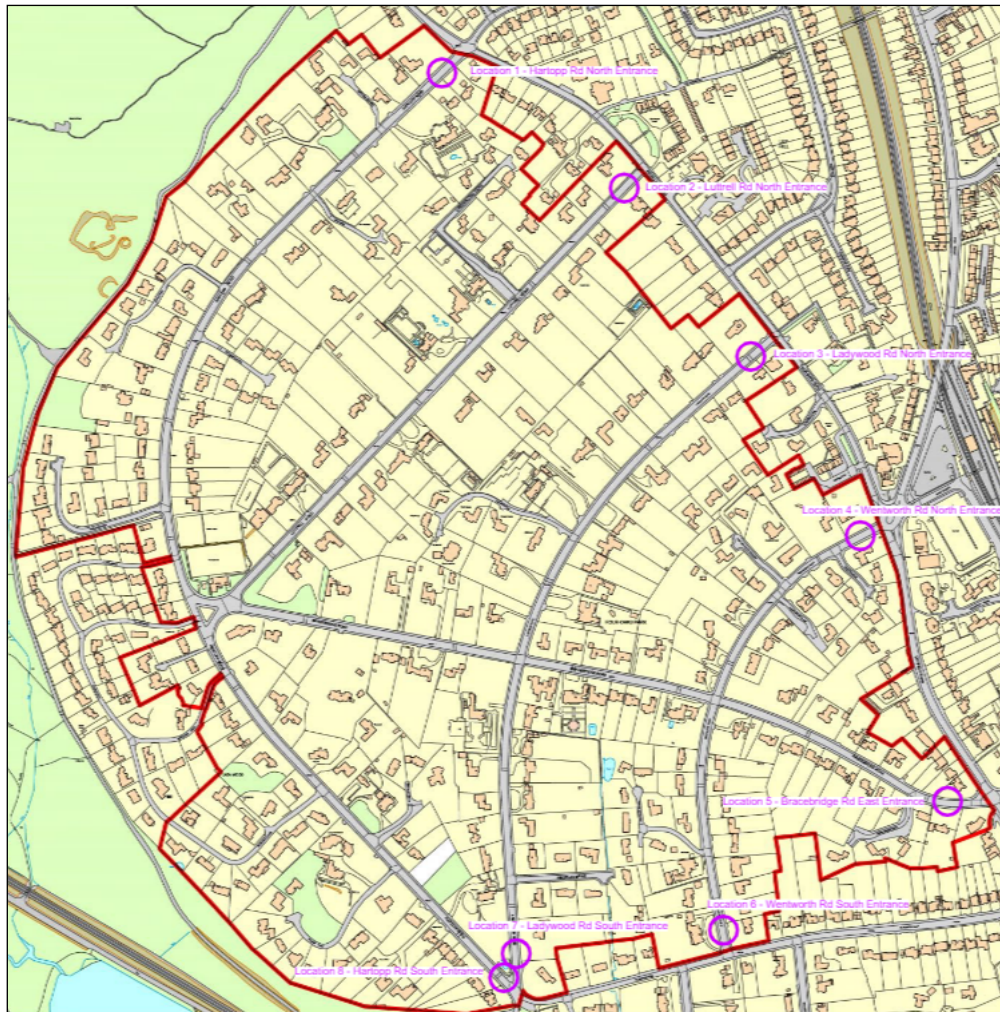


Figure 1: Site Plan

- 1.2. The gates would sit across the vehicular carriageways of the roads, would be side-hung and would only allow vehicles with authorised access to enter / exit the estate. The gates would not sit across the adjacent verges / pavements. The gates would comprise powder coated galvanised steel gates and posts, colour to be agreed. The gates would measure 1.95m high and the gates and posts would measure 7.35m wide. The gates would be automated to provide authorised vehicular access. It is understood that pedestrian access would not be restricted.

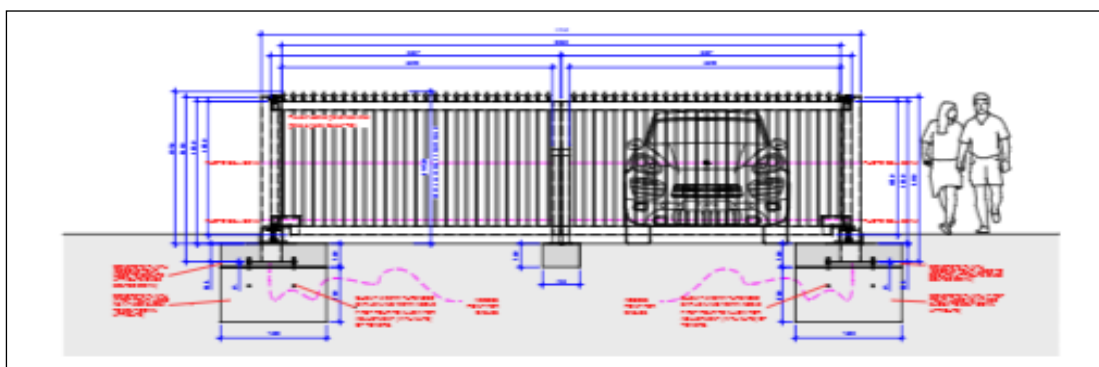


Figure 2: Proposed gate

- 1.3. The following information has been submitted in support of the application:

- A letter summarising the submitted evidence and confirming that the proposed installation of the gates is permitted development, prepared by the Tyler Parkes Partnership Ltd;
 - Legal opinion dated 20th November 2018, prepared by John de Waal QC;
 - Title deed of the Four Oaks Estate Ltd;
 - Title plan of the Four Oaks Estate Ltd;
 - Deeds of covenants pertaining to the Four Oaks Estate roads;
 - Statutory declarations; and
 - Plans showing the boundaries of the Estate and the proposed gated vehicular access control, prepared by Janes Architectural.
- 1.4. Seven statutory declarations have been submitted by the applicant in support of the application, which advise that the individual recollect signage declaring the roads and Estate as “private”, with photographic and cartographic evidence provided to support this.
- 1.5. The Four Oaks Estate Ltd was asked during the consideration of the application if it had any records relating to management or maintenance of the estate streets, they confirmed that they did not have any information dating from prior to 1988.
- 1.6. It is understood that a “farm-style” gate has been erected and installed at the junction of Wentworth Road and Bracebridge Road on 23rd April 2021. The Agent for the applicant has advised that this gate is not operational as yet. The location of the gate is within the Four Oaks Estate however is not one of the locations specified within this application for a Certificate of Lawful Proposed Use or Development. Enforcement action is being pursued as a result of the installation of this gate.
- 1.7. [Link to Documents](#)
2. Site & Surroundings
- 2.1. The application site comprises eight locations within Four Oaks Estate on Hartopp Road, Luttrell Road, Ladywood Road, Wentworth Road and Bracebridge Road. The Four Oaks Estate is predominantly characterised as residential with some elements of sports and leisure uses within the Estate (Four Oaks Tennis Club and Four Oaks Squash Club).
- 2.2. The Estate is bounded by Sutton Park to the west, which is designated Green Belt, SSSI, NNR and SLINC.
- 2.3. [Site Location](#)
3. Planning History
- 3.1. 2021/0443/ENF - Alleged unauthorised installation of gates across multiple highways – enforcement investigation ongoing.

4. Consultation/PP Responses

- 4.1. Highways Department - Based on the evidence procured through the investigation completed thus far, the streets in question are highways for all users, including motor vehicles however are not maintainable at the public expense.
- 4.2. BCC Legal Team - Based on the evidence available to date, the roads in question are highway and therefore the proposal would not qualify as permitted development.
- 4.3. Royal Sutton Coldfield Town Council – object to the application for a lawful development certificate on the grounds that the roads to their knowledge are public highway and the proposals should be subject to a planning application.
- 4.4. Whilst the application for a certificate for lawful proposed development is not required to be advertised, 245 letters of objection have been received. These letters raise the following concerns:
 - Adverse impact on the appearance and character of the Four Oaks Conservation Area;
 - Road closures would move traffic on to surrounding roads, resulting in higher levels of congestion outside of the Estate;
 - Increase in traffic congestion;
 - Would have an adverse impact on community cohesion;
 - Could lead to restricted access to emergency vehicles;
 - Lack of notice / consultation to residents of Four Oaks Estate;
 - The Estate has been subject to open vehicular access throughout its existence and restricted access never implemented;
 - Queries over maintenance and operation of gates;
 - The public have enjoyed continuous unrestricted access for a period of considerably more than 20 years prior to the first notice appearing (anecdotally believed to be in the 1980's);
 - “Private roads” signage erected following more than 20 years of unrestricted road access to the public;
 - Lack of consideration of neighbours by Four Oaks Estate;
 - Vehicular access exists on to the Estate which is not restricted by prohibitive signage at Clarry Drive, Heaton Drive and Parklands;
 - Proposals would restrict access to Sutton Park – Four Oaks Gate.
- 4.5. A petition signed by 145 signatories has been submitted objecting to the application for lawful development certificate on the grounds of:
 - Adverse impact on appearance and character of conservation area;
 - Access for emergency vehicles would be hindered;
 - Congestion at the site of the proposed gates, leading to tailbacks and congestion outside of the Estate;
 - Restricted access to Sutton Park via Hartopp Gate;
 - Increased congestion to Four Oaks Road and Lichfield Road;
 - Lack of advertisement of the application.
- 4.6. A further 5 letters of support to the proposals have been received, commenting that:
 - Estate used as a cut-through for through traffic which has increased traffic throughout the Estate;
 - Residents of the Estate financially contribute towards the maintenance of the roads within the Estate;

- Proposed gates would not restrict access to Sutton Park at Four Oaks Gate and Hartopp Gate.
- 4.7. Councillor Mackey has commented on the application, explaining that he believes the roads concerned are public highway and access throughout should be retained.
- 4.8. Cllr Pears objects to the application, expressing the view that the roads concerned have been subject to public use throughout the existence of the Estate and the roads should therefore be classed as highways.
5. Policy Context
- 5.1. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015
6. Planning Considerations
- 6.1. This application seeks a certificate for lawful proposed use or development (CLOPUD) to be issued for the erection of 8no. automated gates restricting vehicular access at locations throughout Four Oaks Estate. The application is made under Section 192 of the Town and Country Planning Act 1990, which states that (my own emphasis added in bold):
- (1) *If any person wishes to ascertain whether—*
 (a) *any proposed use of buildings or other land; or*
 (b) *any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.*
- (2) 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.**
- (3) *A certificate under this section shall—*
 (a) *specify the land to which it relates;*
 (b) *describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*
 (c) *give the reasons for determining the use or operations to be lawful;*
 and
 (d) *specify the date of the application for the certificate.*
- (4) *The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.*
- 6.2. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides that subject to provisions, planning permission is granted for classes of development described as permitted development in Schedule 2. Part 2 of Schedule 2 relates to minor operations. Class A relates to gates, fences and walls etc, which are copied below for completeness (my own emphasis added in bold):

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1 Development is not permitted by Class A if—

*(a) the height of any gate, fence, wall or means of enclosure erected or **constructed adjacent to a highway** used by vehicular traffic would, after the carrying out of the development, exceed—*

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

- 6.3. In the case of a certificate of lawful proposed use or development, the onus is on the applicant to provide evidence to demonstrate that the development would in fact be lawful. Planning Practice Guidance states the burden of proof is on the applicant to show that a lawful development certificate should be granted. The guidance also goes on to say that the applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
- 6.4. As the applicant is seeking to erect 1.95m high gates, it is for the applicant to provide evidence that this is permitted development, as the streets are not highways. It is for the applicant to provide clarity and precision which in this case, includes clarity as to the status of the streets. In this case, the applicant has provided photographs of road signage throughout the Estate which nominally refers to the roads as “private”, “residents only” and “no access”. No commentary has been submitted which pertains to the question of whether access to the public (i.e. those that are not resident to the Estate) has been restricted or the declaration of the streets on the Estate being not highways has been enforced.
- 6.5. The submitted evidence solely relies on photographic evidence of signage and statutory declarations. It is accepted that such statutory declarations, given under oath and witnessed by a solicitor carry some weight in the assessment of Lawful Development Certificates, however regard must also be had towards other means of evidence and legal interpretation in respect of the clauses set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 6.6. Considerable anecdotal evidence has been submitted in the form of objections to this application for a Lawful Development Certificate, with many more local residents advising that there has been public access across the Estate.

Highways Investigation

- 6.7. The Council's Highway Officer has undertaken an independent investigation on archive material associated with the status of the streets within Four Oaks Estate to seek to establish a conclusive position. This has included analysis of meeting minutes, plans, committee reports and other relevant material.
- 6.8. The investigation has identified the following materials which the Council have interpreted as evidence that historically the streets have been identified as highway and that public access has been retained across said highways:
- The Map attached to the Preliminary Statement for Sutton Coldfield Town Planning Scheme dated 23/03/1932 identifies the streets as highways.
 - The occasions when the owners of the streets approached the Council for the streets to become adopted highways so the streets would be maintainable by the Council.
 - The applications by the Post Office on at least three occasions for permission from the Council for them to install telegraph lines on the streets (it is believed this was done under s6 & s9 Telegraph Act 1863) as amended by s2 Telegraph Act 1892.
 - The request by the owners of the streets for the Council to make an application to the Ministry of Transport for the movement of vehicles to be regulated at the junction of Wentworth Road and Bracebridge Road dated 05-05-1941 and a second request for the regulation of traffic at the junction of Bracebridge Road and Ladywood Road on 10-10-1947 (it is believed that this was done under s46 Road Traffic Act 1930).
 - Electric Lighting Orders Confirmation (No.1) Act 1899 – Sutton Coldfield Electric Lighting Order 1899 (Provision 8 in the Order conferred powers to the Council to provide electric lighting in streets which were not repairable by them, but only if they were specified in the third schedule in the Order and be on land dedicated to public use. Four of the five streets on the Four Oaks Estate were listed: Bracebridge Road, Hartopp Road, Ladywood Road and Wentworth Road.
 - A request submitted to the Council by the Four Oaks Land Limited in 1923 for the Council to undertake repairs to the streets in consequence of damage being caused by traffic not visiting the estate.
 - A request submitted to the Council by the Four Oaks Estate Resident's Association in 1965 for the Council to undertake repairs to the streets in consequence of wear being caused by traffic not to do with the estate.
- 6.9. Several points arise from the documents noted above which constitute evidence that the roads are identified as highways benefitting from public access and that this application for Lawful Development Certificate should be refused:
1. That there was use of the streets by the public, who were not travelling along the streets for the purpose of visiting properties on the Four Oaks Estate.
 2. That the landowners were aware of the use of the streets by the public.
 3. That the Council was made aware of the use of the streets by the public.
 4. That the use by the public of the streets was of such a level that it had caused wear/damage to the streets.
 5. That the wear/damage to the surface of the streets would most likely have been by motor vehicles, as non-motor vehicular use would have been unlikely to cause significance wear of the surface of the street.
 6. That the Council considered the streets to have been dedicated to public use by 1899 and that in 1932 the Council publicly stated that the streets were highways.

7. That statutory undertakers held the view that the streets were highways.
 8. That on several occasions, the owners of the streets desired for the streets to become Highways Maintainable at the Public Expense (HMPE), by requesting that they be taken over by the Council.
 9. That no record has been found of a formal adoption of the streets by the Council, therefore the streets are highways which are not maintainable at the public expense.
- 6.10. From the evidence procured throughout the investigation, it is concluded that the status of the roads are highways by virtue of the historic public access to the roads and across the Estate. No applications or declarations have been made which sought to have the roads concerned formally recorded as not being highways. It is the conclusion of the Highways Officer that in the context of streets, the term 'private' only relates to the absence of a public maintenance liability. As opposed to the absence of any public rights. This is based on the definitions within the 1892, 1959 and 1980 Acts and the decisions and actions the Council made. The signs stating 'private road' and 'private estate' therefore should be interpreted as only informing people that the Council is not responsible for the maintenance of the streets. Further, no evidence has been identified that such access was physically prohibited or enforced.
- 6.11. In summary, no historic documentary evidence has been located to support the view that the land owner objected to the use of the streets by the public or took action to prevent use by the public. There was use of the streets by the public and the land owners were aware of the use of the streets by the public. The Council exercised powers concerning control over the streets in relation to granting applications for installation of statutory undertakers' equipment. On several occasions notice was given to the owners of the streets that the Council intended to use powers limited to streets that were highways; and the owners did not object to the use of these powers.
- 6.12. Based upon the available evidence, on the balance of probability it has been determined that the five streets Bracebridge Road, Hartopp Road, Ladywood Road, Luttrell Road and Wentworth Road are all purpose highways, including carriageway rights and in consequence of there being no formal adoption of the streets, they are highways not maintainable at the public expense. The roads concerned would not benefit from permitted development rights and the erection of gates at the positions identified in the proposed site plan would not be lawful.

Legal Interpretation

- 6.13. The Council's Legal Team have been consulted extensively on the application and advise on the legal definition of roads and highways as well as providing their legal interpretation of the evidence procured through the investigation undertaken by the Council's highway department.
- 6.14. A highway can be dedicated in two ways. The first is by express dedication. The second type of dedication is presumed dedication. This can happen either at common law or by statute under section 31(1) of the Highways Act 1980.
- 6.15. The common law presumption is that land has been dedicated as a highway if it has been used by the public as of right and without interruption. The land does not have to be used for a defined length of time. However, it must have been used for long enough to justify an inference that the freehold owner intended to dedicate the way

as a highway. It is possible, although unusual, that dedication at common law can be presumed on the basis of less than 20 years use.

- 6.16. Based on the findings of the Highway Officers investigation it appears that the public enjoyed continuous unrestricted use of the roads in Four Oaks Estate for a period of 20 years and the roads have been dedicated as highways.
- 6.17. The outcome of the highways investigation and advice from the Council's Legal Team is that there is sufficient evidence to conclude that the roads concerned have benefitted from unrestricted public access for more than twenty years. The Council's Legal team have advised that on the evidence currently available, there are grounds to refuse the application.

7. Conclusion

- 7.1. The evidence currently available to date indicates that the roads concerned (Ladywood Road, Bracebridge Road, Hartopp Road, Wentworth Road and Luttrell Road) constitute highway and therefore the local planning authority consider that the proposal would not qualify as permitted development set out within Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 do not apply and a Certificate of lawfulness of proposed use or development is refused.

8. Recommendation

- 8.1. Section 192 Required and certificate refused.

Reason for Refusal

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- | | |
|---|--|
| 1 | The evidence currently available to date indicates that the roads concerned (Ladywood Road, Bracebridge Road, Hartopp Road, Wentworth Road and Luttrell Road) constitute highway and therefore the local planning authority consider that the proposal would not qualify as permitted development as set out within Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 and a Certificate of lawfulness of proposed use or development is refused. |
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Case Officer: Claudia Clemente

Photo(s)

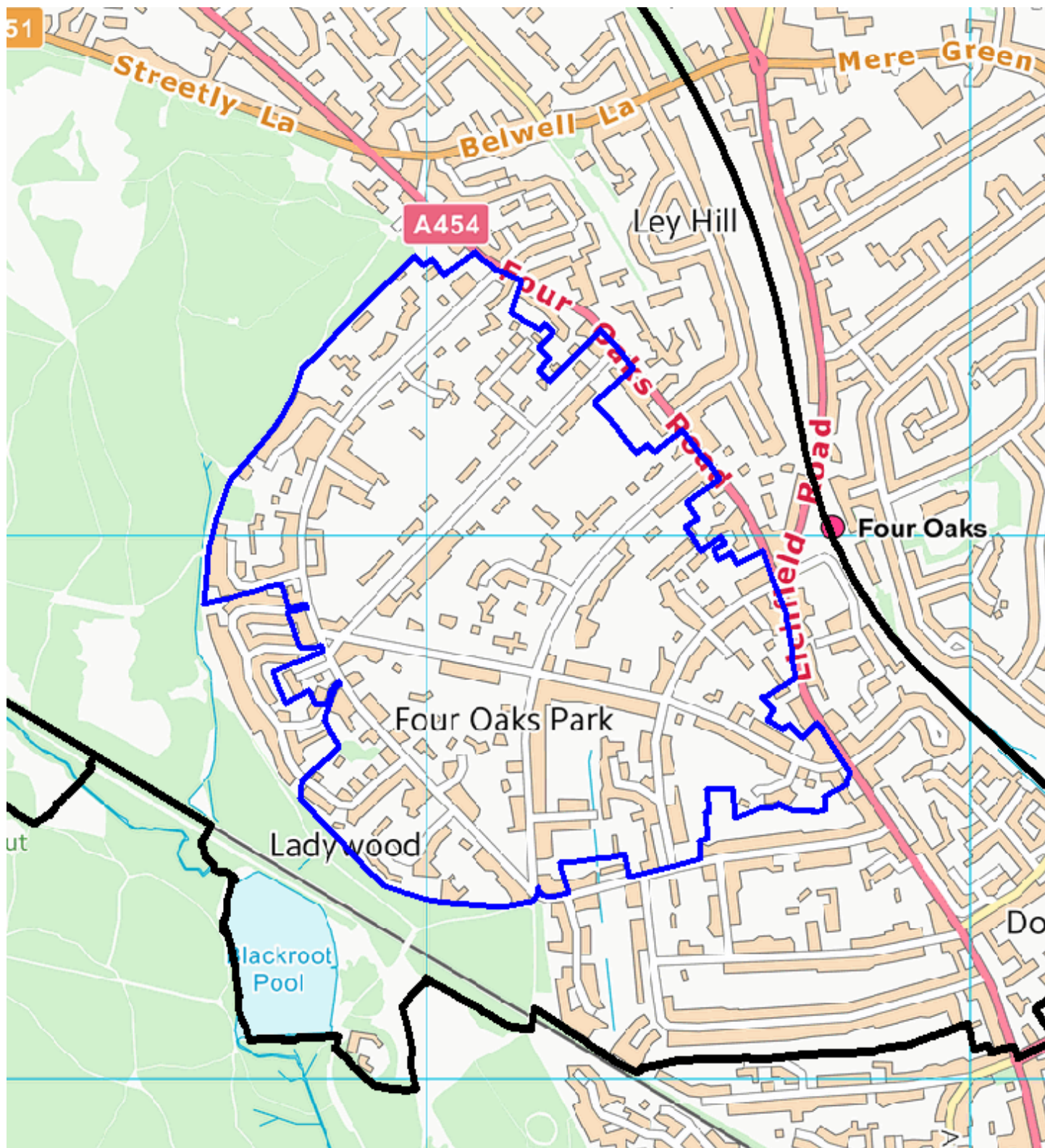


Image 1: Aerial view of Four Oaks Estate



Image 2: Location of proposed gate at Bracebridge Road

Location Plan



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