

MID SUSSEX DISTRICT COUNCIL

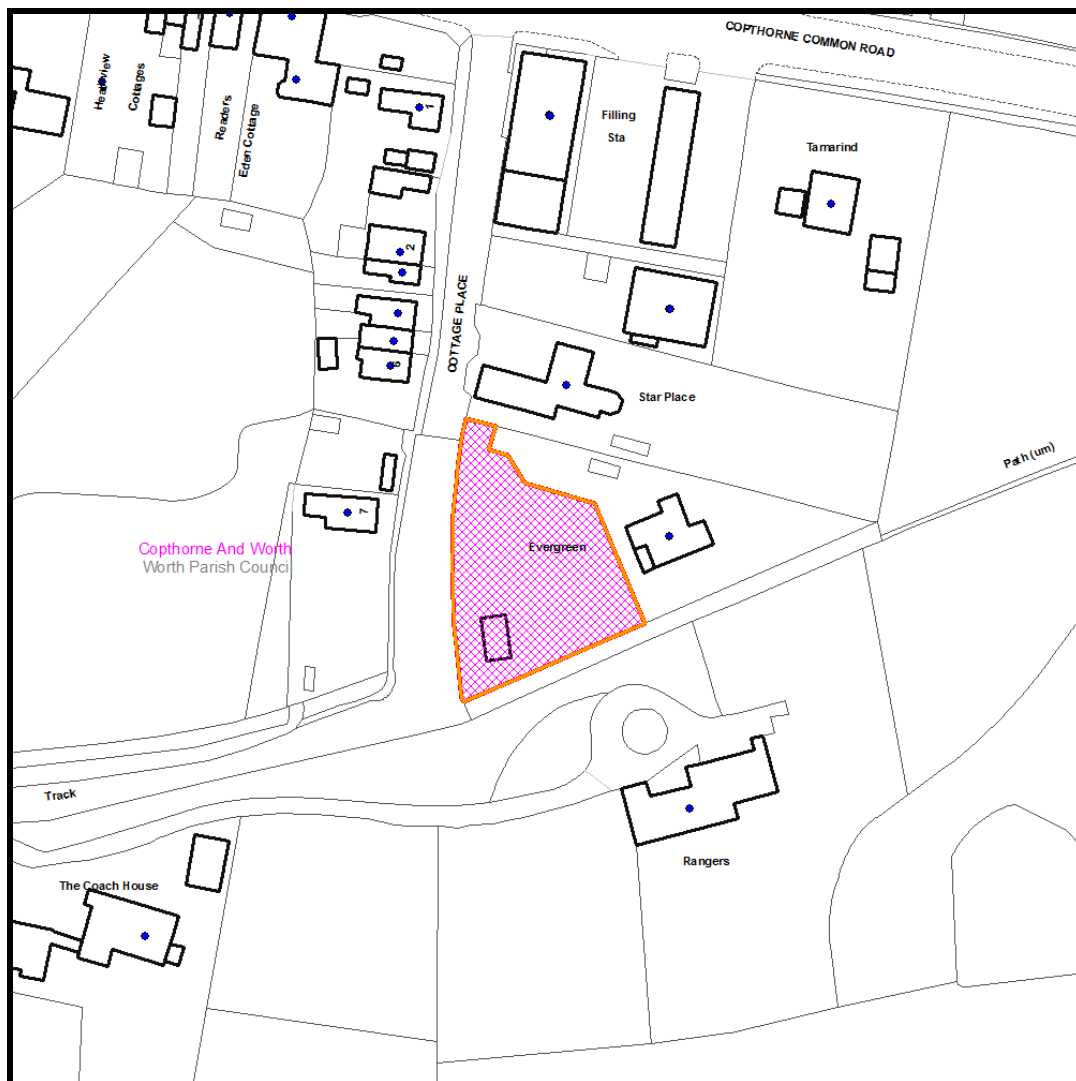
Planning Committee

26 SEP 2019

RECOMMENDED FOR PERMISSION

Worth Parish Council

DM/19/3061



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**EVERGREEN COTTAGE PLACE COPTHORNE COMMON ROAD
COPTHORNE
COMMENCEMENT OF WORKS IN RESPECT OF OUTLINE PLANNING
CONSENT 13/04065/OUT AND RESERVED MATTERS APPROVAL
DM/17/0615.
MR LEIGH AND CHRIS ARMSTRONG**

POLICY: Areas of Special Control for Adverts / Countryside Area of Dev.
Restraint / Aerodrome Safeguarding (CAA) / Radar Safeguarding
(NATS) /

ODPM CODE: Lawful Development Certificates

WARD MEMBERS: Cllr Paul Budgen / Cllr Christopher Phillips /

CASE OFFICER: Joanne Fisher

PURPOSE OF REPORT

To consider the recommendation of the Head of Economic Promotion and Planning on the application for a lawful development certificate as detailed above.

EXECUTIVE SUMMARY

This application is for a lawful development certificate to confirm a lawful start has commenced in respect of outline planning consent 13/04065/OUT and reserved matters approval DM/17/0615 for a bungalow at land adjacent to Evergreen, Cottage Place, Copthorne Common Road, Copthorne.

This is a legal decision where the planning merits cannot be considered.

The application is before committee as the agent is an elected Member for the Copthorne and Worth Ward.

It has been submitted that a lawful start has been carried out before the expiry of the planning permission for the construction of a bungalow through the partial construction of foundations including setting out, excavation and concreting.

It is considered that the work carried out on the site constitute a material operation in accordance with Section 56 of the Town and Country Planning Act (1990) (as amended). All pre-commencement conditions had been discharged. The works therefore constitute a material operation pursuant to the lawful commencement of application 13/04065/OUT and DM/17/0615.

It is therefore recommended that the lawful development certificate be issued confirming that a lawful commencement has occurred in respect of the development of a bungalow on the site and thus the works to implement the above permission and consent may continue.

RECOMMENDATIONS

It is recommended that the lawful development certificate be issued for the reasons outlined at Appendix A.

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTATIONS

WORTH PARISH COUNCIL OBSERVATIONS

To be reported.

INTRODUCTION

The application is made pursuant to Section 191 (1) (b) of the Town and Country Planning Act 1990 ("TCPA 1990") and seeks confirmation that a lawful start has occurred under the details approved under planning references 13/04065/OUT and DM/17/0615 at Land adjacent to Evergreen, Cottage Place, Copthorne Common Road, Copthorne.

RELEVANT PLANNING HISTORY

Outline planning permission was granted on the 19th February 2014 under reference 13/04065/OUT for the erection of 1 detached bungalow utilising an existing single vehicular access drive and detached garage on land to the west of Evergreen. The matter for consideration was the principle of the development with all matters (access, layout, appearance, landscaping and scale) reserved for future consideration.

Condition 1 of this approval states:

'Approval of the details of the access, appearance, landscaping, layout and scale of the site (hereinafter called the "reserved matters") shall be obtained from the Local Planning Authority, prior to the commencement of development on site.

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990.'

Reserved Matters was granted on the 5th April 2017 under reference DM/17/0615 for the approval of access, appearance, layout and scale, following approval of the above outline planning permission (reference 13/04065/OUT).

Following this pre-commencement conditions 2, 3, 5, 6, 8, 9 and 10 and pre-occupation condition 13 of the outline approval 13/04065/OUT was approved under reference DM/19/0381. The last condition of the outline approval (condition 3 landscaping) was discharged on the 12th March 2019.

SITE AND SURROUNDINGS

The site is situated at the end of an existing narrow private road of Cottage Place set off Copthorne Common Road. The lane currently serves a number of residential properties and a commercial unit of a vehicle bodyshop and van rental. In addition, there is petrol filling station at the top of the lane.

The site is formed of Evergreen, a detached bungalow with a hipped roof set within the plot with a number of outbuildings to the north and west of the unit. The proposed dwelling is to be sited to the west of the existing bungalow within an area used partly as garden and hardstanding serving the existing detached garage to the west of the property. There is an existing access serving the garage separate to that of the main dwelling. At present part of the land subject of the application site is divided off by a timber fence.

To the south and western boundaries is vegetation forming screening of the site. Beyond these boundaries is a public right of way.

The application site is situated within the countryside as defined in the District Plan.

APPLICATION DETAILS

The application seeks confirmation that a lawful start has commenced under the details approved under outline planning reference 13/04065/OUT and reserved matters approval DM/17/0615.

The application has been made on the basis that a material operation has been carried out before the expiration of two years from the date of approval of the last of the reserved matters as set out in the decision notice in respect of the outline approval. The reserved matters approval was determined on the 5th April 2017, thereby works were required to be carried out before the 5th April 2019.

A planning statement has been submitted with the application stating that the works were carried out prior to the 5th April 2019 as the construction works for the partial construction of foundations was carried out between the 15th and 22nd March 2019. It is submitted that these works constitute a lawful commencement of the approved development. Supporting documents showing photographs of the setting out, excavation and pouring of the foundations have been submitted as well as invoices for materials and the concrete for the works. The statement sets out a timeline of the works carried out. It states:

'The work was carried out to the following timescale:

15th March 2019

1) A Building Control application and fee were submitted to Mid Sussex District Council.

2) Setting out work was carried out to accurately mark the centre line of the foundations by MARK BUDGEN and KIEREN HOLLANDS of ALFRED BUDGEN LIMITED.

18th March 2019

3) The applicants purchased and erected HERAS fencing to protect the existing trees in accordance with the approved Arboricultural Method Statement.

20th March 2019

4) The necessary excavation work was carried out, level pegs for foundation concrete were positioned and day bars installed by GERALD BUDGEN and JOHN SHORLAND of ALFRED BUDGEN LIMITED.

21st March 2019

5) A Building Control inspection was carried out by Mid Sussex District Council and the excavated foundations were found to be acceptable.

6) Foundation concrete was supplied by UNITED GRAB HIRE and laid by GERALD BUDGEN, MARK BUDGEN, JOHN SHORLAND and KIEREN HOLLANDS of ALFRED BUDGEN LIMITED.'

LIST OF POLICIES

As this is an application to establish the lawful commencement of the development; development plan policies are not applicable.

ASSESSMENT

To implement a planning permission the developer must:

- a. Carry out a "material operation" (as defined in section 56 of the TCPA 1990); and
- b. Ensure all planning conditions requiring compliance prior to commencement of development have been complied with.

Section 56 (2) of the Town and Country Planning Act (TCPA) 1990 states that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. S.56 (4) lists what is meant by 'material operation':

"material operation" means—

a) any work of construction in the course of the erection of a building;

aa) any work of demolition of a building;

b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

d) any operation in the course of laying out or constructing a road or part of a road;

e) any change in the use of any land which constitutes material development.'

It has been submitted through photographs, and invoices regarding materials used that works have been carried out before the expiry of the 2013 outline approval (reference 13/04065/OUT) and the 2017 reserved matters approval (DM/17/0615) consisting of the laying of a small area of foundation for the attached garage of the dwelling. The location of the foundations is shown in the submitted drawing within Section 3 of the submitted Planning Statement accompanying the application. This shows a 'U' shaped area of foundations measuring some 6.6 metres by 2 metres in an area where the western end wall of the dwelling is to be situated. A site visit by your Planning Officer confirms that these works have been carried out in accordance with the details submitted. Importantly, the operational development was carried out after the approval of the last of the pre-commencement conditions on the 12th March 2019.

Section 56(4) (b) of the TCPA (1990) includes the digging of a trench which is to contain the foundations, or part of the foundations, of a building. It is considered that the location of the trench which was dug and the foundations laid is broadly in accordance with the location of the dwelling approved as part of the 2013 outline and 2017 reserved matters approvals.

It is considered that the works referred to in the Applicants submission does constitute a material operation, was undertaken within the time limit imposed by Condition 1 of the 2013 outline permission and after the approval of the pre-commencement conditions.

No third party evidence has been provided which contradicts the submission in terms of the works carried out and when.

As such, it is considered that on the balance of probabilities, the works carried out are lawful and the remaining development approved under the 2013 outline permission and the 2017 reserved matters application can lawfully be carried out.

CONCLUSION

The works carried out on site, namely the partial construction of foundations including setting out, excavation and concreting constitutes a material operation in accordance with Section 56 of the Town and Country Planning Act (1990) (as amended). The works therefore constitute a material operation pursuant to the lawful commencement of application 13/04065/OUT and DM/17/0615, and a certificate to this effect may be issued solely for the purpose of section 191 of the Town and Country Planning Act (1990) (as amended).

APPENDIX A – RECOMMENDED CONDITIONS

1. The works carried out on site, namely the partial construction of foundations including setting out, excavation and concreting constitutes a material operation in accordance with Section 56 of the Town and Country Planning Act (1990) (as amended). The works therefore constitute a material operation pursuant to the lawful commencement of applications 13/04065/OUT and reserved matters approval DM/17/0615 under Section 191 of The Town and Country Planning Act (1990) (as amended).
2. The Mid Sussex District Council hereby certify that on 29th July 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

Plans Referred to in Consideration of this Application

The following plans and documents were considered when making the above decision:

Plan Type	Reference	Version	Submitted Date
Location and Block Plan	EGREEN-02		29.07.2019
Site Plan	EGREEN-02		29.07.2019

APPENDIX B – CONSULTATIONS

WORTH PARISH COUNCIL OBSERVATIONS

To be reported