

MID SUSSEX DISTRICT COUNCIL

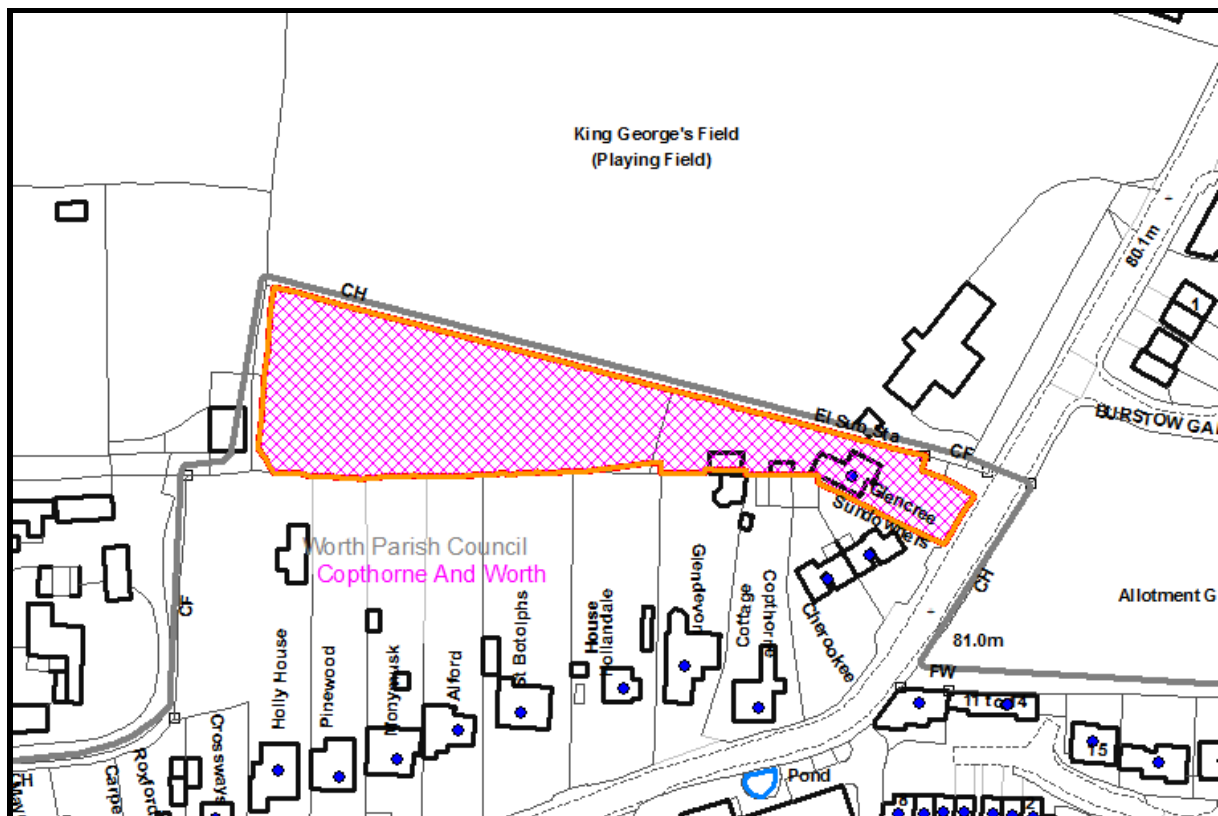
Planning Committee

17 OCT 2019

RECOMMENDED FOR PERMISSION

Worth Parish Council

DM/19/3353



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**GLENCREE COPTHORNE BANK COPTHORNE CRAWLEY  
CONSTRUCTION OF THE GARAGE FOUNDATIONS OF PLOT 2 IN  
ORDER TO ESTABLISH A LAWFUL COMMENCEMENT OF WORK IN  
RESPECT OF 13/03222/OUT AND DM/16/4792.  
C/O AGENT**

POLICY: Article 4 Direction / Article 4 Direction / Areas of Special Control for  
Adverts / Built Up Areas / Countryside Area of Dev. Restraint /  
Classified Roads - 20m buffer / Green Belt / Aerodrome  
Safeguarding (CAA) / Radar Safeguarding (NATS) / SWT Bat  
Survey

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 planning references 13/03222/OUT and DM/16/4792 at Glencree, Copthorne Bank, 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 through the construction of foundations for the detached garage to serve Plot 2.

It is considered that the work carried out on the site constitutes 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 13/03222/OUT and DM/16/4792.

It is therefore recommended that the lawful development certificate be issued confirming that a lawful commencement has occurred in respect of the development of two dwellings 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**

None

## **WORTH PARISH COUNCIL OBSERVATIONS**

This being a legal consideration; this application is noted.

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### **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 13/03222/OUT and DM/16/4792 at Glencree, Copthorne Bank, Copthorne.

### **RELEVANT PLANNING HISTORY**

Outline planning permission was granted on the 13th November 2013 under reference 13/03222/OUT for the demolition of the existing bungalow and the erection of two dwellings and shared access drive. The matters for consideration were the access and layout of the proposal with all other matters (appearance, landscaping and scale) reserved.

Condition 1 of this approval states:

*'Approval of the details of the scale, layout and appearance 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 must be begun before the expiration 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 January 2017 under reference DM/16/4792 for the approval of the scale, landscaping and appearance of the two dwellings following the approval of the above outline planning permission (reference 13/03222/OUT).

A prior approval application for the demolition of the existing bungalow was approved under reference DM/18/2984 on the 6th August 2018.

Following this pre-commencement condition 2 relating to the reserved matters approval DM/16/4792 was approved under reference DM/18/4205 on the 22nd October 2018.

In addition, pre-commencement conditions 2, 3, 4, 6, 7, 9, 10, 11, 13 and 14 relating to the outline approval 13/03222/OUT was approved under reference DM/18/4206. The last condition of the outline approval (condition 7 drainage) was discharged on the 14th November 2018.

## **SITE AND SURROUNDINGS**

The site consists of a fairly level, irregular shaped plot of land located on the east side of Copthorne Bank, Copthorne. The former bungalow 'Glencree' has been demolished and there is heras fencing around the site. Vehicle and pedestrian access is gained to the site from Copthorne Bank.

The site lies partly within the built up area of Copthorne and the rear part within the countryside as defined in the District Plan. The area of the site within the built up area is approximately 0.15ha in area and comprises of all the land that forms the front (east) part of the site up to a line approximately 90 metres into the site which then follows the (northern) boundaries of the rear gardens of the properties along Copthorne Bank that are arranged perpendicular to the site.

The northern and western boundaries are well screened from a recreation ground to the north and open land to the west by trees and vegetation. The level of screening along the southern boundary to the rear gardens of Copthorne Bank varies as levels of vegetative screening and tree cover are sporadic and boundary treatments vary. Most of the properties along Copthorne Bank benefit from generous rear gardens. To the north of the site there is a pavilion associated with the recreation ground and to the east of the site is a substantial area of allotments.

The surrounding dwellings are mostly large detached properties set within substantial, verdant plots with generous rear gardens, the exceptions being Cherokee and Sundowners, a pair of semi-detached properties, set back from the road in close proximity to and with little screening from the application site.

## **APPLICATION DETAILS**

The application seeks confirmation that a lawful start has commenced under the details approved under outline planning reference 13/03222/OUT and reserved matters approval DM/16/4792.

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 January 2017, thereby works were required to be carried out before the 5th January 2019.

A planning statement has been submitted with the application stating that this requirement was met *'by the carrying out of construction works comprising a material operation on Wednesday 5th December and Thursday 6th December 2018'*. Supporting documents showing photographs of the excavation of the garage foundations as well as the invoice for the concrete for the works have been submitted. The statement sets out a timeline of the works carried out. It states:

*The construction work was carried out to the following timescale:*

**5th December 2018**

- 1) A Building Notice and fee were submitted to Mid Sussex District Council and the acknowledgement below received:*
- 2) A Building Control inspection by Mid Sussex District Council was booked for 6th December 2018*
- 3) HERAS fencing was erected to protect the existing trees in accordance with the approved Arboricultural Method Statement.*
- 4) Setting out work was carried out to accurately mark the centre line of the foundations by GERALD BUDGEN and JOHN SHORLAND of ALFRED BUDGEN LIMITED.*
- 5) The necessary excavation work was carried out and level pegs for foundation concrete were set in place by GERALD BUDGEN and JOHN SHORLAND of ALFRED BUDGEN LIMITED.*

**6th December 2018**

- 6) A Building Control inspection was carried out by Mid Sussex District Council and the excavated foundations were found to be acceptable.*
- 7) Foundation concrete was supplied by CEMEX 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 an invoice regarding materials used that works have been carried out before the expiry of the 2013 outline approval (reference 13/03222/OUT) and the 2016 reserved matters approval (DM/16/4792) consisting of the construction of the garage foundations for plot 2. 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 where the side and rear walls of the garage are 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 14th November 2018.

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 garage for Plot 2 approved as part of the 2013 outline and 2016 reserved matters approvals.

It is considered that the works referred to in the Applicants submission does constitute a material operation and 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 2016 reserved matters application can lawfully be carried out.

## **CONCLUSION**

The works carried out on site, namely the construction of the garage foundations for plot 2 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 13/03222/OUT and DM/16/4792, 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).

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## **APPENDIX A – RECOMMENDED CONDITIONS**

1. The Mid Sussex District Council hereby certify that on 22nd August 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):

The works carried out on site, namely the construction of the garage foundations of plot 2 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 13/03222/OUT and reserved matters approval DM/16/4792 under Section 191 of The Town and Country Planning Act (1990) (as amended).

### **Plans Referred to in Consideration of this Application**

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

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Submitted Date</b>
Location Plan	GLENC2-02	A	21.08.2019

## **APPENDIX B – CONSULTATIONS**

### **Parish Consultation**

This being a legal consideration; this application is noted.