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# Appeal Decision

Site visit made on 23 July 2024

**by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 August 2024.**

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**Appeal Ref: APP/M0655/X/24/3345979**

**Land To Rear Of 57-91 Orford Road, Warrington**

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by The Egerton Trust against the decision of Warrington Borough Council.
  - The application ref 2023/00279/CLDE, dated 1 March 2023, was refused by notice dated 10 May 2024.
  - The application was made under section 191(1)(b) of the 1990 Act.
  - The development for which a certificate of lawful use or development is sought is described as "confirmation is sought that work has begun to enact previous permission 2019/34628 (new dwelling) and that the time limits set out to begin development have fallen away".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the description of development from the decision notice, which was amended and agreed during the application process.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. For the avoidance of doubt, the planning merits of the development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act.
5. The application sought to establish that the development was begun within the statutory time period, for the purposes of Section 56 of the 1990 Act, and that the planning permission for the erection of a detached bungalow is extant.

## **Main Issue**

6. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. I must decide whether, on the balance of probabilities, the appellant has shown that the development was begun in accordance with the planning permission and its conditions.

## **Reasons**

### *Background*

7. The relevant planning permission, Ref 2019/34628 dated 9 July 2020, granted permission for the erection of a bungalow on land to the rear of No 57 to 91 Orford Road.
8. The planning permission was subject to 19 conditions, as follows – (1) that the development permitted shall begin no later than three years from the date of the permission; (2) compliance with plans, as listed; (3) compliance with the noise management scheme; (4) requiring trickle vents for windows; (5) and (6) measures to mitigate risks from land contamination; (7) and (8) requiring a drainage scheme for surface water; (9) requirement for foul and surface water systems to be separate; (10) requiring visibility splays; (11) requiring vehicular access; (12) surface treatment for vehicular access; (13) provision of parking; (14) requiring a construction method statement; (15) requiring a landscaping scheme; (16) restricting the use of the stables; (17) hours restriction for cleaning the stables; (18) development in accordance with the Flood Risk Assessment; (19) removing permitted development rights.
9. Condition nos. 5, 7, 8, and 14 prohibit the commencement of development until a requirement has been met. These conditions were discharged formally by decision notice ref 2022/42715 dated 24 February 2023.

### *Evidence*

10. The appellant's evidence comprises photographs of the site, intended to show site clearance and strip foundations, and documents related to the building regulations initial notice.
11. The photographs attached at appendix 5 of the appellant's statement are shown alongside the site layout plan. There is a relatively small image of a trench with an arrow indicating a position towards the rear of the proposed dwelling as shown on the plan. There is a further image of that trench with the arrow indicating a slightly different position but also in the vicinity of the proposed rear wall. A third image shows a van, some 'heras' fencing and a digger on the land. None of the images are dated.
12. The image at appendix 10 is larger and shows a trench has been dug. This is not dated, and it is not clear where on the site the trench was. It appears different to the other images submitted, however. Part of a fence is visible in the image at appendix 10, which does not appear in those showing the trench at appendix 5.
13. An initial notice for works on the land was sent by an approved inspector to the Council on 27 May 2022. A letter from the Council has been submitted acknowledging the initial notice, also dated 27 May 2022.

14. The appellant maintains in their statement that the trench was dug in the location of the approved bungalow sometime in January 2023 and submits that this amounts to a material operation. I note that different dates have been suggested during the application process, not least on the amended application form which states the works were carried out on 27 May 2022.

### *Analysis*

15. Section 56(2) of the 1990 Act provides 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. 'Material operations' are defined in Section 56(4) as including the digging of a trench which is to contain the foundations, or part of the foundations, of a building. A material operation does not have to be completed. However, it is necessary for the works carried out to be comprised in the planning permission. Where there is a dispute, the question will be whether the works were done in accordance with the relevant planning permission and were material as a matter of fact and degree.
16. The appellant's supporting evidence is very limited. Crucially, the photographs do not show the trench would contain the foundations of the proposed bungalow because its position is not clear. It is not possible from the evidence to establish the position of the trench in relation to the approved plans. The arrows on the drawing are not sufficient to show the location of the trench, and these are ambiguous in any event. In addition, there are differences between the submitted images at appendices 5 and 10. Further, there is no detail on the site clearance works, for example, what took place and where on the site this occurred. It is not apparent that the works included the demolition of a building, which could be considered a material operation. The documents relating to building control only show an intention to start works on site.
17. On the basis of the evidence before me, I am not satisfied that the appellant has shown on the balance of probabilities that the development was begun in accordance with the planning permission. It is not necessary to consider whether any relevant pre-commencement conditions were discharged prior to the relevant date given my conclusions above.

### **Conclusion**

18. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of "work has begun to enact previous permission 2019/34628 (new dwelling) and that the time limits set out to begin development have fallen away" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*D Moore*

Inspector