



Appeal Decision

Site visit made on 4 May 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2022

Appeal Ref: APP/C3620/W/20/3264323

Carpel House Horsham Road, South Holmwood, Surrey RH5 4LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Danny Matthews against the decision of Mole Valley District Council.
 - The application Ref MO/2019/1641/PLA, dated 7 August 2019, was refused by notice dated 16 October 2020.
 - The development proposed is the importation of material to increase level to unused land to create benefit and to cover exposed sewer pipe.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to Policy ENV66 of the Mole Valley Local Plan 2000. The Council has since confirmed that this is not a saved policy and thus reference to it was erroneous. As the appellant has not sought to specifically address the policies cited by the Council and that the decision notice also references a newer policy from the Mole Valley Core Strategy 2009, which addresses the same issue, I am satisfied that the appellant has not been prejudiced by this mistake.
3. The appeal site is located within the Green Belt. The Council raises no objections to the effect of the proposal on the Green Belt. Based on the evidence before me, including my own observations, I find no reason to conclude otherwise.

Main Issues

4. The main issues are whether or not sufficient information has been provided in relation to i) flood risk; and ii) contamination.

Reasons

Flood Risk

5. The appeal site forms a field adjacent to the appellant's dwelling at Carpel House. The objective of the proposal is to raise the land levels in order to protect a Thames Water sewer pipe which runs north-south across the eastern end of the field and to allow for the general improvement of the land, in particular its drainage. There is a brook which borders part of the appeal site's southern boundary and which the Thames Water pipe crosses.

6. The materials to be used to raise the land and provide the infill for the drainage trenches would include concrete, bricks, tiles, ceramics, aggregates and stones. Soils would then be used to cover the hardcore, with the intention that it would provide a basis for the specified planting, which in turn would help bind the soils and thereby create a stable surface.
7. In relation to raising of the land and covering of the exposed pipe, the Construction Management Method Report (September 2020) (the 'CMMR') notes that the proposal 'requires careful planning and engineering. The results of the completed project need to be long-standing and maintained accordingly.' I would agree with this as a guiding principle of the proposed works, both in seeking to improve drainage and to cover the exposed pipe. To fail in this objective seems to me to be highly likely to result in the project having the opposite effect, namely damage to the pipe and problems for the site and adjacent brook.
8. The submitted Flood Risk Report (September 2020) notes that the 'design of the drainage will allow a small, constant flow from the land into the watercourse. The pipes being used in the drainage are not large and this will help to hold back any significant flow.' The CMMR contains a diagram of the basic tile drainage design together with a diagram of an individual drainage trench. Both are generic diagrams which are not specific to the site.
9. Whilst the proposal was supported by a single site layout showing the area to be filled and a single cross section towards the western end of the site, there were no further details provided to support the objectives set out in the reports. Thus, there was not a levels survey of the land as existing nor comprehensive details of the proposed finished levels or the proposed gradient of the land. There was not a drainage plan or details of the actual pipes to be used. Furthermore, there were no details of the land raising around the pipe itself and thus it is not clear exactly how the integrity of the pipe would be protected and thus a potential flood risk avoided.
10. Without these details I cannot be sure of how the land would be engineered and graded, whether the vegetation would be likely to bind and how the pipe would be protected from potential future damage. It is therefore not possible to know how the resulting land would drain and be confident that it would not lead to flooding.
11. Furthermore, the appellant has not disputed the Local Lead Flood Authority's assessment that the submitted run-off rates indicate flows will increase over existing levels. As a result, it is not known whether other mitigation measures might be necessary. All of the above are therefore significant omissions and accordingly, I cannot be sure that the works would ensure that there would not be an increased risk of flooding.
12. Given such significant reservations remain at this stage as to whether or not the project's objectives could be met, it would not be appropriate to grant a permission subject to conditions requiring the submission of the missing information.
13. I therefore find that insufficient information has been provided to overcome concerns regarding flood risk. Accordingly, the proposal is contrary to Policy CS20 of the Mole Valley Core Strategy (2009) which, amongst other things, seeks to reduce the risk of flooding from all development.

Contamination

14. The Environment Agency (EA) has raised concerns that the source of the material is unknown. As such, they are concerned that the development might constitute waste disposal and that the works might not be exempt from the Environmental Protection regime. It is these concerns on which the Council largely rely in relation to the issue of contamination.
15. The source of the material is not stated but I do not consider this to be unusual at the early stages of a proposal, particularly as the project could conceivably involve material from more than one source. However, the CMMR confirms that the imported material would be inert and that none of it would be hazardous, regardless of its source.
16. I acknowledge that the Environmental Protection and Planning regimes operate alongside each other. However, I have no evidence before me to indicate that the materials would not, or could not be as proposed, or that any approval could not be conditioned to limit the development to the range and nature of materials specified in the application. The proposal which is before me is one of land raising and improvement and I determine the appeal on that basis.
17. As such, any aspects of the proposed development in relation to waste and the Environmental Protection regime would be for the EA to regulate and enforce as appropriate.
18. Given the above, I have no evidence before me to conclude that the operation would be one of waste disposal or that the materials to be used would be anything other than those specified in the submission. The CMMR makes clear that the materials would be inert and non-hazardous, and a condition limiting the range and type of materials used to those specified in the CMMR would be appropriate were I minded to allow the appeal. On this basis, there is nothing to indicate that the nature of the material to be used would lead to contamination of the land or watercourse.
19. Furthermore, from the evidence before me and my own observations of the site and surrounding area, I have no reason to conclude that the general findings of the Ecology Report (2020) are anything other than what one might reasonably expect from the site.
20. However, as noted above, there is a lack of clear information regarding the works around the pipe which crosses the appeal site. If carefully engineered and if the broad approach set out in the CMMR were to be followed, then I have no reason to doubt that the project could be successfully achieved. However, without sufficient information and drawings to clearly demonstrate how the pipe would be protected and how the land around it would be built up, there is a risk that such works could harm the integrity of the pipe. Were the pipe to be damaged then there is a real risk of discharge to the land and watercourse, not only potentially causing the flooding referred to above but contamination too. Again, without sufficient evidence to demonstrate that the works could be undertaken on this site without causing such risks, it would not be appropriate to grant a permission subject to conditions requiring the submission of further detailed information.
21. I therefore find that insufficient information has been provided to overcome concerns regarding contamination. Accordingly, the proposal is contrary to

Policies ENV4 and ENV22 of the Mole Valley Local Plan (2000) which, amongst other things, seek to ensure that development is of an appropriate form and scale and does not cause harm to the locality.

22. Furthermore, the proposal would be contrary to paragraphs 43 and 183 of the National Planning Policy Framework which, amongst other things, note that the right information is crucial to good decision-making and that decisions need to take into account any risks arising from contamination.

Other Matters

23. I have not had further regard in this decision to concerns over the time taken by the Council to make its decision or the other 'aggravating factors' referred to by the appellant. They are matters to be taken up directly with the Council. I have focused on the planning merits of the scheme in regard to the main issues of the case.
24. I have no reason to doubt the appellant's intentions to improve the quality of the land and protect the pipe, particularly as this is land which is overlooked from his house. However, a planning permission runs with the land, not the individual and therefore it is important that the full details of a proposal are clearly known and established before a development is permitted. As the missing information I have identified is fundamental to establishing the overall parameters of the proposal and ultimately its acceptability, they are not matters which should be dealt with by condition.
25. I acknowledge that there could be benefits from a proposal that improves the land and its drainage as well as protecting the Thames Water pipe. Indeed, I note that the Council has not objected to the principle of the development. However, in the absence of sufficient information to conclude that the details of the scheme would be acceptable, I am unable to allow the appeal.

Conclusion

26. I have found the proposal does not contain sufficient information in relation to flood risk and contamination and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Stewart Glassar

INSPECTOR