

## ITEM

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| <b>Application Reference</b> | <b>DC/078355</b>  |
| <b>Location:</b>             | 92 Heathbank Road<br>Cheadle Hulme<br>Cheadle<br>SK8 6HX  |
| <b>PROPOSAL:</b>             | Relocation of existing culvert head with a section of the existing culvert tunnel replaced with an open ditch |
| <b>Type Of Application:</b>  | Full Application  |
| <b>Registration Date:</b>    | 19.10.2020  |
| <b>Expiry Date:</b>          | 20201214  |
| <b>Case Officer:</b>         | Jane Chase  |
| <b>Applicant:</b>            | Mr Barry Lowe   |
| <b>Agent:</b>                | Pettifer Architecture   |

### **DELEGATION/COMMITTEE STATUS**

Area Committee - 4 or more objections

### **DESCRIPTION OF DEVELOPMENT**

Running along the rear garden boundary of 92 Heathbank Road is an underground culvert. Associated with this is a culvert head positioned in the corner of the garden (north western, left hand corner) at the junction of where the open watercourse emerges from the neighbouring rear garden and flows into the culverted section across the application site.

The application proposes to open the watercourse where it flows along the rear garden boundary such that it will be contained within an open ditch 0.45m wide and 4.5m deep. The culvert head in the north western, left hand corner will be dismantled and rebuilt in the north eastern, right hand corner where the open ditch connects with the existing culverted watercourse along the rear garden boundary of the neighbouring house.

### **SITE AND SURROUNDINGS**

The application site is located on the north side of Heathbank Road and comprises a residential property with a landscaped rear garden. Similar properties are positioned to either side on Heathbank Road. The rear garden of the application property adjoins those of houses on Southdown Crescent to the north of the site with the boundary being formed by a variety of conifers and large garden shrubs.

Along the rear boundary of the site is a culverted watercourse and in the north western, left hand corner a culvert head marking the position of the transition between the open section of this water course in the rear garden of 100 Heathbank Road to the west and the culverted section within the application site. The culverted section of the watercourse within the application is at a lower level than the open section in the adjacent rear garden. Where the watercourse enters the rear garden of 90 Heathbank Road to the east, it remains within a culvert.

A summerhouse is positioned in the north west, left hand corner of the rear garden adjacent to the culverted watercourse.

## **POLICY BACKGROUND**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

### **The Development Plan includes-**

- Policies set out in the Stockport Unitary Development Plan Review adopted 31<sup>st</sup> May 2006 which have been saved by direction under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004; &
- Policies set out in the Stockport Local Development Framework Core Strategy Development Plan Document adopted 17<sup>th</sup> March 2011.

### **Saved policies of the SUDP Review**

EP1.7 Development and Flood Risk

### **LDF Core Strategy/Development Management policies**

SD-6 Adapting to the Impacts of Climate Change

CS8 Safeguarding and Improving the Environment

SIE1 Quality Places

SIE3 Protecting, Safeguarding and Enhancing the Environment

### **National Planning Policy Framework**

A Revised National Planning Policy Framework (NPPF) issued by the Secretary of State for Housing, Communities and Local Government (MHCLG) on 19th February 2019 replaced the previous NPPF (originally issued 2012 & revised 2018). The NPPF has not altered the fundamental legal requirement under Section 38(6) of the Planning and Compulsory Purchase Act 2004 that decisions must be made in accordance with the Development Plan unless material considerations (such as the NPPF) indicate otherwise.

The NPPF representing the governments up-to-date planning policy which should be taken into account in dealing with applications focuses on achieving a lasting housing reform, facilitating the delivery of a greater number of homes, ensuring that we get planning for the right homes built in the right places of the right quality at the same time as protecting our environment. If decision takers choose not to follow the NPPF, then clear and convincing reasons for doing so are needed.

N.B. In respect of decision-taking the revised NPPF constitutes a “material consideration”.

*Para.1 “The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied”.*

*Para.2 “Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”.*

*Para.7 “The purpose of the planning system is to contribute to the achievement of sustainable development”.*

Para.8 *“Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

- a) an economic objective*
- b) a social objective*
- c) an environmental objective”*

Para.11 *“Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.*

Para.12 *“.....Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed”.*

Para.38 *“Local planning authorities should approach decisions on proposed development in a positive and creative way..... Decision-makers at every level should seek to approve applications for sustainable development where possible”.*

Para.47 *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing”.*

Para.124 *“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

Para.130 *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development”.*

Para.148 *“The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should*

*help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.”*

Para.150 *“New development should be planned for in ways that:*

*a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure”*

Para.163 *“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment<sup>50</sup>.*

*Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

*a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*

*b) the development is appropriately flood resistant and resilient;*

*c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*

*d) any residual risk can be safely managed; and*

*e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

Para.213 *“existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)”*.

### **Planning Practice Guidance**

The Planning Practice Guidance (NPPG) is a web-based resource which brings together planning guidance on various topics into one place (launched in March 2014) and coincided with the cancelling of the majority of Government Circulars which had previously given guidance on many aspects of planning.

### **RELEVANT PLANNING HISTORY**

DC/074343 - Proposed outbuilding (already constructed) situated towards the north western corner of the rear garden over an existing culvert adjacent the side and rear boundary of the application site (retrospective application).; Decision Date: 20-JAN-20; Decision: WDN

### **NEIGHBOUR'S VIEWS**

Letters from 5 properties have been received objecting on the following grounds:-

- The proposal incorrectly shows the location of the rear boundary and illustrates incorrect 'ground' levels. The proposed dimension of a ditch will not be deep enough (artificially raised ground level to rear of outbuilding) to meet the existing 'open watercourse' running along rear boundary of 100 Heathbank Rd, and provide the fall necessary for uninterrupted flow of water through the watercourse. Due to these points there is insufficient space (70cm) to allow the required dimensions and

engineering of this proposal in a way that will not cause problems along this watercourse, or to my property (i.e. erosion of banking), in the future.

- The surface-water run-off and ground-water drainage from my property. Excess water will find its way to drain to the lowest natural point (ie. bottom of the original banking that is infilled). This effect of water draining between soil layers of original fall (ie. riparian bank) and artificially raised level will effectively destabilise remaining elements of the infilled section causing erosion and collapse of my property's side into the ditch of infilled section. The damage to established trees/roots (potentially killing them) along this banking will make matters even worse.

- The outbuilding foundation is a concrete slab/raft foundation laid on surface of the 'ground' level +0.000 at bottom of the bank, and due to these levels discrepancies one can work it out that the proposed depth of the culvert will not be deep enough to meet the incoming open watercourse and questions its viability. The ditch will need to be deeper (using applicants measures, twice depth as proposed) than proposed design, due to difference in levels. A deep, steep sided, open watercourse ditch running in such close proximity to the outbuilding could potentially undermine that slab foundation.

- There have been historical local flooding problems on the properties of Southdown Crescent relating to this watercourse being obstructed (now cleared March '20). Repeat events need to be avoided, and not created.

- Properties/householders along both sides of this watercourse are Riparian owners, and as such have 'rights' bestowed upon them with regard to the free flow of water through this watercourse. Properties on the higher bank side of Southdown Crescent (upstream from existing culvert header chamber) have been badly affected by garden flooding due to watercourse blockage preventing ground-water drainage. Following investigations and remedial actions this watercourse has only recently (March '20) been restored to an 'operational' status, which will hopefully alleviate the flooding problems of the past. A significant volume and flow of water passes along this watercourse during longer periods of sustained, or bursts of heavy rainfall. I respectfully request that the SMBC LLFA Engineer is further consulted to carefully consider the points raised here (and other evidence submitted), and re-examines the proposed engineering of the 'solution' contained within this application.

- I am very concerned that the relocation of the culvert head could cause flooding problems on my property. At present I have not experienced flooding problems but my immediate neighbours do have flooding problems in their rear gardens. I think that this could be due to the fact that the drainage ditch leading to the culvert is not kept clear. While some neighbours have tried to clear it others appear to allow garden waste to accumulate in the ditch and impede the water flow. If the open ditch is extended further there is more likelihood of it being blocked particularly as there appears to be limited space to accommodate an open ditch.

- An open water course at the bottom of the garden will give vermin easier access to our garden and house.

- The proposals should not impact any foliage in neighbouring gardens.

- The plans contain no written dimensions.

1 letter has been received neither objecting or supporting the application but making the following comments:-

- Our back garden, along with those of our neighbours, is drained by the watercourse of which the culvert forms a part.

- The watercourse is surrounded by mature trees and shrubs, meaning that it is liable to blockage, particularly from autumn leaf fall.

- Recently, during periods of heavy or sustained rain, our back garden, along with those of our neighbours, has become flooded. We have been able to alleviate the flooding by removing leaves and other debris from the open part of the watercourse.

- This has demonstrated that the watercourse continues to play an important role in the drainage of the area, and that access for maintenance is vital.
- Any changes to the culvert should, therefore, not impinge upon its functionality or accessibility.

### **CONSULTEE RESPONSES**

Drainage Engineer (LLFA) – no objections subject to the imposition of a condition requiring details of the maintenance of the open ditch and measures to stop debris entering the adjacent culverted watercourse.

### **ANALYSIS**

The planning history on the application site has informed the submission and content of this current planning application. In this respect Members are advised that a summerhouse has been partially built in the north west corner of the rear garden without the benefit of planning permission. This summerhouse is built over part of the culverted watercourse that runs through the application site. A planning application seeking the retention of this building was submitted in September 2019 (DC073434) however the Council's Drainage Engineer (the LLFA) objected to that application due to the construction of the outbuilding over the culvert (with the prospect of increased flood risk through lack of access to maintain). As such and on the advice of the Planning Officer, that application was withdrawn to allow the applicant the opportunity to resolve the drainage issues with the LLFA and then separately apply for planning permission to retain the summer house with the works to the culvert being implemented.

The summerhouse therefore does not form part of this application and will in due course be the subject of a separate application. The works proposed by this application are however intended as enabling works to create an appropriate drainage environment such that when permission is applied for the retention of the summerhouse, the objections previously raised by the LLFA will have been overcome.

This current application therefore proposes:-

- The removal of the culvert headwall at the junction of the open ditch in the garden of 100 Heathbank Road with the culverted watercourse in the garden of the application site.
- The replacement of the culverted watercourse with an open ditch as an extension of that in the rear garden of 100 Heathbank Road and
- The construction of a culvert headwall at the junction of the proposed open ditch in the garden of the application site with the culverted watercourse in the rear garden of 90 Heathbank Road.

No objections have been raised by the LLFA in relation to the proposed opening up of the culvert and relocation of the culvert headwall. In this respect it is noted that the replacement of the culverted section of the watercourse with an open ditch will extend that which exists across the adjacent rear garden of 100 Heathbank Road. The relocation of the watercourse to ground level as an open ditch will allow for the maintenance and unblocking of the watercourse (through the removal of silt, debris and vegetation) in a way that is not possible with a culverted, underground watercourse; this will in turn improve the ability of natural groundwater drainage, assist the flow of water and reduce the risk for flooding generally. The Council's Flood Risk Management Team advises that consent for the proposed works has been approved under the Land Drainage Act 1991. This is in line with the Council's

Local Flood Risk Management Strategy which takes every opportunity to remove culverted sections of watercourses.

The proposed culvert headwall will be constructed below ground level. As such and noting the level of planting in the application site and adjacent gardens, this structure will not harm the visual amenities of the locality.

The objections from the neighbour with regard to the merits of the proposed ditch and its impact on surface water drainage are noted, however, the LLFA who are the authority on the matter of drainage find the proposed development acceptable. In view of this, such objections cannot be sustained.

Objections regarding the potential of the proposed works to attract vermin are noted, however, an open ditch that is well maintained and easily cleared of rubbish and debris is less likely to attract rats than a culverted watercourse that cannot be so easily maintained. The opening up of the watercourse will also allow for any run off from the summerhouse to naturally soak away.

On the basis of the above, the proposal constitutes a sustainable solution to the drainage of the site compliant with saved UDP Review policy EP1.7 and policy SD-6 of the Core Strategy DPD.

In response to objections received to the application, Members are advised accordingly:-

- The issue of land ownership and the position of boundaries is not for the planning system to enforce. This is a wholly private matter between the relevant landowners and one in which the Council has no authority or role. So far as the determination of the planning application is concerned, the grant of permission does not over ride any other legal obligation incumbent upon an applicant. Should it therefore transpire that the applicant does not own all the land required to implement a development and cannot obtain the consent of the relevant landowner then this may prevent them from lawfully carrying out the development. This however is not a matter that should influence or prevent the determination of a planning application.
- In terms of the accuracy of the plans, at the point where the section is taken on the plans (which is to the rear of the summerhouse), the section is understood to be accurate.
- Objections that the proposed ditch will not be deep enough to meet the level of the open watercourse in the garden of 100 Heathbank Road are noted. It is understood that the level of the open ditch across 100 Heathbank Road has recently been lowered and that it is proposed to restore it to its previous level. That being the case, the proposed open ditch will be deep enough to meet the level of that adjacent watercourse.
- The impact of the proposed ditch upon the adjacent garden trees and shrubs within and adjacent to the site is not clear however none of those adjacent are legally protected under planning law nor considered worthy of such protection. Noting that they could be removed at any time without the consent of this authority, any loss would not justify the refusal of planning permission. It should also be noted that the grant of planning permission does not override any other legal obligations and should the construction of the ditch require or result in the removal of trees or shrubs that are not in the ownership of the applicant then this is a matter that must be resolved privately between the relevant parties.

- The plans are drawn to a metric scale so by using a scale ruler, any dimension can be established. As such there is no need for any dimensions to be annotated on the plans.

**RECOMMENDATION** GRANT SUBJECT TO CONDITIONS