

ITEM

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

UPDATE

At the previous meeting of the Bramhall and Cheadle Hulme South Area Committee Members resolved that consideration of the application be deferred to a future meeting of the Area Committee pending the undertaking of further assessment of the proposed development by the Council's Drainage Engineer by means of an onsite evaluation and to allow for further consideration of the application against the Council's approved Local Flood Risk Management Strategy.

Following a site visit attend by the Council's Drainage Engineer and the Planning Officer, that assessment has been carried out. In this respect Members are advised as follows:

Policy SD6 of the Core Strategy along with Chapter 11 of the NPPF confirm that in order to reduce the causes and impacts of flooding, the use of natural flood management techniques and SuDS should be the preferred approach unless there is clear evidence that this is not appropriate. This approach is further endorsed in the Council's SPD on Sustainable Design and Construction. Whilst these documents do not specifically refer to deculverting, the replacement of a culverted watercourse with an open watercourse accords with that policy position and associated guidance on SuDS.

The Council's Local Flood Risk Management Strategy was published in April 2016 having been agreed by the Executive Committee on 26th April 2016. Whilst this strategy does not form part of the development plan, for planning purposes it is clearly a material consideration which given its approval by Members should be afforded weight in the determination of this application. This strategy confirms that the Council will discourage further culverting and will review opportunities to open up watercourses.

In this respect the Strategy confirms that the aim of the Council is to:

- a) reduce the potential impact and costs of flooding in the Borough and
- b) ensure the resilience of local water bodies and drainage assets.

To achieve these aims the Council will identify opportunities for natural flood management and the restoration of ordinary watercourses, including de-culverting together with the promotion of environmentally sustainable solutions including for example de-culverting and natural flood risk management. The proposed development accords with the aims and intentions of the Council as set out in this strategy.

In visiting the application site with the LLFA, it was confirmed that the plans submitted with this application are accurate in that there is sufficient space behind the summerhouse to construct the ditch as proposed. It was noted however that the ground level behind the summerhouse from which it is proposed to excavate the ditch is approximately 66cms above that of the open watercourse in the adjacent garden of 100 Heathbank Road. That being the case, if the open ditch in the garden of the application site is simply dug as shown on the proposed plans then the proposed open watercourse being 45cms deep will be approximately 21cms above the height of that in the garden of 100 Heathbank Road. In this respect because of these differences in ground level the watercourse will not be able to function.

The Council has been advised that the level of the adjacent open watercourse in the garden of 100 Heathbank Road has been reduced in level. Notwithstanding those works, this open watercourse is still above the height of the culvert in the garden of the application site so as existing will still function. To connect with this adjacent open watercourse the applicant therefore has to either reduce the level of their open watercourse by circa 21cms so that it meets the level of that in the garden of 100 Heathbank Road or the levels of the watercourse in the garden of 100 Heathbank Road have to be raised by circa 21cms.

Members attention of drawn to Section A of the plan attached to this agenda. This cross section of the ditch behind the summerhouse proposes that a 45cms deep ditch will be dug from the existing ground level within the application site. If the applicant amends their proposal by leaving the ground levels as existing and simply increasing the depth of the ditch to 66cms, then given the depth of the ditch coupled with its relatively narrow width is likely to cause the banks of the ditch to become unstable and liable to collapse. Clearly this would not benefit the operation of the watercourse. Alternatively the applicant could lower the existing ground level in the garden by 21cms and then dig the 45cm deep ditch. The issue with this however is that the ground level to the top of the proposed ditch would most likely be level with the base of the foundations to the summerhouse and the base of the ditch would be some 45cms below those foundations. Given the slightly higher ground level of the adjacent garden on Southdown Crescent (which is on the other side of the ditch behind the summer house) this would also create an embankment approximately 66cms high along the boundary of the watercourse with this garden. The creation of this ditch in this manner, below the foundations of the summerhouse could undermine the stability of that structure. In addition to this, the creation of an embankment 66cms high along a ditch of the narrow width proposed would potentially have implications for the stability of the ditch wall and the trees and planting that exists in this location.

As such, the proposals so far as they relate to that within the application site (92 Heathbank Road) remain as previously proposed. Outside of the application site however in the adjacent garden of 100 Heathbank Road it is proposed to reinstate/raise the level of the open watercourse with a fall towards the east such that it will meet the level of the proposed open watercourse in the application site. It is noted that the works proposed by the owner of 100 Heathbank Road are outside of the planning application site as edged red in this application and therefore do not

form part of this planning application. That aside, the works proposed by the neighbour do not amount to development requiring planning permission and can be carried out without the approval of this Planning Authority. Clearly however the works proposed by this planning application in the garden of 92 Heathbank Road will only ensure the proper operation of the watercourse if the works in the neighbouring garden are carried out. Members are advised that the LLFA have the power under the Land Drainage Act to ensure that in the event that planning permission is approved for the works at 92 Heathbank Road and that approval is implemented, that the works to 100 Heathbank Road are also carried out at the same time.

Since the application was last considered by Members, 4 further emails have been received objecting to the application on the following grounds:-

- The proposed location for this ditch is not over the original watercourse / culvert course (original watercourse under rear of outbuilding), so there may be issues with drainage sustainability. My neighbours and I know the ground water from the water table from Southdown Crescent seeps/drains into the existing open-watercourse, but this was not working when the watercourse was backing up with water, so is evidence it is above this level.

- It seems highly likely the water table will seep/drain through the bank described as a natural drainage route (properties are not level as proposal site-plan shows) along rear of my property. There will also be surface storm water run-off from my garden and down the bank (approx gradient 1:1.66) directly into a steep sided ditch with no 'bank' to reduce run-off velocity (ie. as the existing open watercourse has).

- The proposed width & required depth dimensions of the ditch will position it on/into the bank, meaning the water-table will be seeping directly into the steep (practically vertical) ditch wall, with high potential for erosion and collapse of ditch side.

In response to the above, Members are advised that the proposed development accords with the aims of the development to secure the use of natural flood management techniques and SuDS so as to address the causes and impacts of flooding. The proposal has the support of the Council's Drainage Engineer (LLFA) and also accords with guidance contained within the Council's approved SPD and Local Flood Risk Management Strategy both of which advocate the use of SUDS to manage flood risk.

Members are advised that references to a 3m easement is a general guide to allow easier and safe access to watercourses. In most instances culverts are relatively deep and so land on either side is required to allow potential excavation. In the case of a shallow stream such as that proposed it would be reasonable to accept that such an easement is not necessary. Open ditches are common place and would have been in existence prior to development and culverting. It is unlikely that a shallow ditch will create landslides. There are no utilities located to the rear of the summerhouse and as such, the creation of an open ditch will have no impact on terms of accessing such utilities.

Given the small scale of the open watercourse proposed there is no reason to believe that the flow of water through it would have implications for the stability of the banks for the properties on Southdown Crescent.

The opening up of culverts to restore their natural state will reduce surface and particularly groundwater problems. Culverted watercourses do not drain the surrounding land: they cannot as water is limited in entering such a system except at

the head of the system. A more natural channel however restores the drainage of surrounding land and therefore is more effective in terms of managing flood risk.

Members are advised that the application remains recommended for approval and in the event that this recommendation is agreed, a condition can be imposed to secure the submission, approval and implementation of a maintenance strategy for the watercourse and culvert headwall where it extends through the application site. Such a condition will ensure that the operation of the watercourse is maintained to an optimum level.

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 0.45m 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 31st 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 17th 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 assessment⁵⁰. 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 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

