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## Appeal Decision

Site visit made on 5 September 2017

**by Andrew R Hammond MSc MA CEng MIET MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 04 October 2017**

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**Appeal Ref: APP/B3600/X/16/3160668**

**Land West of Sheepwalk, Sheepwalk, Shepperton, Middlesex.**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Symbiotic LLC against the decision of Surrey County Council.
  - The application Ref SP16/010702/SCC, dated 14 June 2016, was refused by notice dated 16 September 2016.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is the deposit of at least 18 inches of topsoil on the land.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Surrey County Council against Symbiotic LLC. This application is the subject of a separate Decision.

### Main Issue

3. The main issue in this appeal is whether Surrey County Council's decision to refuse to grant a certificate of lawful use or development was well founded.

### Reasons

4. Planning permission 3929 relates to the land subject to this appeal and was for the refilling of a disused gravel pit. There is no dispute between the parties that the permission was implemented. Condition 4 of the planning permission required *"on completion of filling operations on any part of the site a layer of at least 18" thick of top soil shall be placed on the filled part in order to secure so far as is practicable an area of land capable of supporting plant growth, and in accordance with any conditions imposed under the Middlesex County Council Act 1944."*
5. The appellant contends that Condition 4 was never complied with and that the development for which a certificate is sought, being required by an extant condition on the permission, is lawful.
6. The Council's case is twofold: firstly that the evidence suggests that the development for which permission was granted was completed between 1975

and around 1978 when the deposit of topsoil was carried out in compliance with Condition 4; and secondly, since the permission was granted the land has been used for other purposes and a new chapter in the planning history has started, supplanting the pit filling use which has long since ended and thus the depositing of soil purportedly as a condition of that permission cannot be carried out lawfully.

*Whether a new chapter has commenced*

7. In support of the suggestion that a new chapter in the planning history has commenced the Council argue that the land has been used for grazing since 1978, as agreed by the appellant, and that the use of the land for the purposes of the 1990 Act is, therefore, agriculture even though the grazing was not formally authorised as it has become lawful through the passage of time. In support the Council also refer to un-appealed planning enforcement notices relating to deposit of waste and the stationing of mobile homes, in 2002 and 2012 require the land to be restored to open uncultivated land and open land in the green belt, respectively.
8. That argument, however, fails in that the use of any land for the purposes of agriculture does not involve development of the land (Section 55(2)(e) of the Act). That being the case no new development, as defined in the Act, occurred and a new chapter in the planning history did not begin and the 1950 permission is still extant.

*Whether Condition 4 has previously been complied with*

9. The current condition of the land, as evidenced at the site visit, is generally unkempt with brambles, thistles and scrubby vegetation together with scattered trees; typical of uncultivated and neglected land. Throughout the site waste material such as bricks, hard-core and general waste can be seen breaking the surface and other materials including, but not limited to, a number of large vehicle tyres and some heavy current electrical cabling appear to have been deposited on the surface after filling operations had been completed.
10. The Council have referred to a letter from February 1979 from the County Council to the Borough Council, apparently relating to an appeal against an enforcement notice issued concerning unauthorised use of land adjacent to land west of Sheepwalk. The letter states that *"the pit has been refilled and in part restored, approximately 50% of the land being used for grazing. I therefore see no justification for a depot of this size to be located on the site to undertake the limited restoration work still required."*
11. The Council also refer to evidence relating to the above appeal where the Assistant Planning Officer for the Borough Council describes the land west of Sheepwalk as *"...open grazing land formally a gravel pit..."* ; and the Development Enforcement Officer of the County Council states, in his evidence, *"the area south of the Motorway, west of Sheep Walk, north of Chertsey Road and east of Range Villas has been refilled. The southern half of the area has been partly top-soiled and is used for grazing. The northern half of the site is badly restored with no top-soil treatment, the land is very uneven and the vegetation is considered to be of poor quality."* In the decision letter associated with the appeal the Inspector reports at paragraph 5 that *"the [appeal] site comprises an irregular area of very rough land behind and on*

*each side of Range Villas, 3 pairs of semi-detached house built in 1902. To the east is level pasture land which has been reclaimed, and to the north a lake, part of a former gravel pit which borders the M3 motorway.”*

12. However, none of the above material is before me nor is any other, potentially also contradictory, information referred to by the Council such as references to possible proposals in 1981 for capping the area and restoring to better quality grazing land. Furthermore the information referred to is inconclusive as to whether top soil had been spread in accordance with Condition 4 or not. In this respect it is important to note that the condition requires that the ‘top soil shall be placed on the filled part in order to secure so far as is practicable an area of land capable of supporting plant growth’ and not ‘capable of supporting agriculture’. There is a substantial quantity of plant growth across the appeal site albeit that much of the flora is indicative of poorer quality soils.
13. Nevertheless, in an attempt to ascertain the nature of the site and the extent of any restoration, a series of trial holes were dug on and around the appeal site on 18 August 2016. Whilst none of these showed a depth of top soil of 18” and all contained a quantity of landfill waste plus some waste that appeared not to be inert, it might be reasonably expected that over a period of almost 40 years the top soil would become compacted and that some landfill waste would rise if not comprehensively compacted and capped prior to the spreading of top soil.
14. Furthermore, there is evidence that at least part of the appeal site was subjected to unauthorised waste tipping as evidenced by the 2002 enforcement notice and the presence of relatively recent waste, such as the tyres, apparent at the site visit.
15. On the balance of probabilities, therefore, it would appear that sufficient top soil to satisfy the requirements of Condition 4 of Planning Permission 3929 was spread on the site at some time in the past, probably between 1975 and 1979, and the appellant cannot rely on Condition 4 to demonstrate that the spreading of a further 18” of top soil on the appeal site would be lawful.
16. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the deposit of at least 18 inches of topsoil on the land 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 as amended.

*Andrew Hammond*

Inspector

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