

TO: PLANNING & REGULATORY COMMITTEE

DATE: 13 DECEMBER
2017

BY: PLANNING DEVELOPMENT CONTROL TEAM
MANAGER

DISTRICT(S) SPELTHORNE BOROUGH COUNCIL

ELECTORAL DIVISION(S):
Laleham & Shepperton
Mr Walsh

PURPOSE: FOR INFORMATION

GRID REF: 506642 166962

TITLE: DECISION ON PLANNING APPEAL REF: APP/B3600/X/16/3160668

LAND WEST OF SHEEPWALK, SHEEPWALK, SHEPPERTON

Background

1. The appeal site, measuring some 2.8ha, forms part of a larger area of land west of Sheepwalk, north of Chertsey Road, south of the M3 motorway, and east of Littleton Lane. It is located within the Metropolitan Green Belt, within Flood Zones 2 and 3, and entirely surrounded by a functional flood plain.
2. The site has a long and complex planning history that commenced before the 1947 Planning Act and which has involved several planning authorities some of which do not exist today. It has been subject to authorised and unauthorised development involving both 'county' and 'non-county' matters over the years.
3. In this instant case the appeal concerns a 1939 permission (Ref. F55) to extract sand, gravel and ballast from part of the appeal site, and a 1950 permission (Ref. 3929) to fill the resulting mineral void. Condition 4 of the 1950 consent required that *"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..."*

Lawful Development Certificate Application

4. In June 2016 Symbiotic LLC sought a lawful development certificate (LDC) (Ref. SP/2016/01072) from the County Planning Authority (CPA) for *"the deposit of at least 18 inches of top soil"* across the appeal site.
5. It was claimed that condition 4 of the 1950 permission has not been complied with and that by spreading top soil the landowner would render the land capable of supporting good quality plant growth and allow for use of the land for agriculture.
6. A number of legal arguments were deployed by the applicant to substantiate the claimed lawful development.
7. However, following thorough consideration of the applicant's claim and a site visit the CPA resolved to refuse the applicant's LDC application in September 2016 for the following reasons:

- I. The deposit of waste material on the application site amounts to a `use` within the meaning of s55(3)(b) of the Town and Country Planning Act 1990 as opposed to `operational development` within the meaning of s55(1) of the same.
- II. Mining operations ceased on the land with the implementation of planning permission Ref. 3929 dated 13 October 1950.
- III. On the balance of probability the waste related use permitted by planning permission Ref. 3929 was completed between 1975 and 1978.
- IV. On the balance of probability since at least 1978 the land has been used for grazing purposes with intermittent unauthorised uses which have been subject to enforcement action under the Town and County Planning Act 1990.
- V. The waste related land use permitted under planning permission Ref. 3929 cannot be reimplemented as it has been completed and there has been an intervening material change of use of the land to grazing for over 30 years and therefore planning permission Ref. 3929 is spent.

The Appeal

8. The applicant appealed this decision to the Secretary of State for Communities and Local Government by way of the Planning Inspectorate.
9. However, the Inspector dismissed the applicant's appeal on 4 October 2017. In addition to dealing with the applicant's and CPA's legal arguments, his decision letter explained that the CPA's decision to refuse the applicant's LDC claim was well-founded on the basis that *"...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"*.
10. The CPA made a 'costs' application but this was declined by the Planning Inspectorate.
11. A copy of the appeal decision letter is attached for information purposes.

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