

Thames Farm Action Group, Rambler Cottage, Reading Road,
Lower Shiplake, Oxon RG9 3PH

Emma Bowerman,
SODC Planning,
135 Eastern Avenue
Milton Park
Milton OX14 4SB

04 January 2022
By Email only

Dear Emma,

**Thames Farm, Reading Road Lower Shiplake - Objection to Planning Applications P21/S4749/LDP
& P21/S4524/DIS**

I am writing to you to object to the above Planning Application for an LDP, and also to support the statement made to residents by SODC Head of Planning on 7 May 2021 about this matter, which stated that in SODC's opinion, a further full planning application would be necessary from Taylor Wimpey in respect of the groundworks / soil remediation and stabilization works that they now propose. The validity of P21/S4524/DIS is also contingent upon SODC's decision upon P21/S4749/LDP and so this letter of objection applies equally to that application.

About TFAG

You will recall that Thames Farm action group is primarily a Shiplake Resident's vehicle formed to represent residents' interests in ensuring that Thames Farm was/is correctly progressed and scrutinized as it proceeds through the approvals process.

After SODC permitted a very material variation to be made to the Outline Planning Permission for Thames Farm, and thus also allowed the commencement of works on site followed by the subsequent issue of a Lawful Development Certificate to the applicant, many of the residents of Lower Shiplake felt that the authorities could not necessarily be relied upon to fully and correctly review the actions and proposals of Taylor Wimpey.

TFAG is assisted in its work by JBA Engineers as experts in Hydrogeology and Hydrology and also Temple Bright our Planning Lawyers.

TFAG is supported by approx. 1,500 residents who have signed our petition and a further approx. 220 residents of Shiplake Villages, many of whom have contributed to funding TFAG's work or are assisting in other ways.

TFAG's Objectives

TFAG's sole purpose is to ensure that following the discovery of dissolution features and sinkholes over a wide area of Thames Farm, post the grant of Outline Planning Permission at Appeal, the proposed development is properly progressed and reviewed by the various regulatory authorities. This would ensure that the revised proposals, involving a major ground remediation project, are

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properly designed, scrutinized and approved, if found to be both acceptable and safe, before any further works are permitted to start on site.

Why is TFAG objecting to this application and also to P21/S4524/DIS?

Our opinion and as set out to residents by SODC Head of Planning on 7 May 2021, is that whilst Taylor Wimpey may have received an OPP to build 95 houses on the site, it does not have Planning Permission to undertake a major ground remediation project to stabilize and remediate the site prior to its development for housing. It therefore also follows that P21/S4524/DIS is also wrongly submitted since permission to undertake the works that it covers has not yet been approved and may not be approved.

Our objections include the following:

Why do the proposed Groundworks not benefit from the existing Planning Permission?

We believe that there are 2 primary reasons for this conclusion:

1. The base application for permission to develop, submitted and prosecuted at Appeal by Taylor Wimpey's predecessors contained a variety of errors and misleading information. The net result of this was that the application bypassed a number of important consultations and checks, when it passed through both the Planning Approval system and subsequently the Appeal system.

These questions and the related answers provided by the applicant are set out here:

Q. How will foul drainage occur? – Answer. Possible foul pumped system

Commentary: *Correct answer*

Q. Is the site in flood risk area 2 or 3? – Answer. No

Commentary: *Incorrect in that off-site drainage is proposed to a flood risk area*

Q. Is the site within 20m of a watercourse river stream or beck? - Answer. No

Commentary: *Incorrect as there is no mention of the underground aquifer, or SPZ*

Q. Will the proposal increase flood risk elsewhere? – Answer. No

Commentary: *Incorrect as the proposal is to pump drainage away and variously to area(s) that already flood and are in flood zones 2 or 3.*

Q. How will surface water be disposed of? – Answer. Sustainable drainage system (and not existing watercourses) nor main sewer or pond or soakaways.

Commentary: *Incorrect*, an off-site pumped solution is now proposed together with on-site storage tanks and other storage facilities. By definition a pumped solution will not be 'sustainable'.

Q. 13) c. Are there any features of geological conservation/importance? – A. No not on the site or adjacent or near the proposed development.

Commentary: *Incorrect*, as there are present underground aquifers, on site hydrology channels, a nearby potable bore hole etc.

It is evident that in many instances the answers given were simply wrong or at best, guesses:

To reiterate, the reality, is that these proposals will:-

- Require an Off-site pumped drainage solution
- Make use of existing watercourses for SW drainage
- Be unable to utilize a sustainable drainage system
- Increase flood risks elsewhere including existing residences
- Take water to a Flood risk area zone 3
- Interfere with the water table and aquifer in an SPZ1
- Be within 20m (vertically) of an important (underground) water course i.e. the Aquifers providing potable water to Henley and area.

Very importantly, in Q13)c) the presence of underground aquifers, on site hydrology channels, a nearby potable bore hole was incorrectly answered in relation to geological features of importance on or near the site. The only such data that was provided with the application, was an FRA and a surface level topographic survey. The SPZ1 designation is not mentioned on the application forms at all, and there is little more than a passing reference to the aquifers and groundwater on pages 21 and 22 of the Design and Access Statement accompanying the application viz:-

2.28 Resting groundwater levels were recorded at between 12 – 16 m below ground level. According to the EA Aquifer Map, the bedrock chalk strata at the site is classified as a Principal Aquifer. As such the aquifer may support water supply or river base flow on a strategic scale.

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The effect of these failures to disclose/find and supply correct data and submit it, have resulted in this application bypassing a number of regulatory consultees such as the EA and parts of Thames Water as well as providing the wrong 'alerts' to SODC Drainage and OCC as LLFA. There has been an over simplification as a result of the deficiencies in the data supplied which would and should have been a very complex and otherwise carefully considered application by consultees. That scrutiny which would then also have been available to the Appeal Inspector would have resulted either in a different outcome at Appeal, or significantly more and more stringent conditions applied.

These questions exist on the forms and require accurate and full answers/disclosure so that the LPA can ensure that all of the relevant issues that are likely to arise with an application are properly considered and addressed. Each question will trigger a line of enquiry and due diligence checks by the LPA. Failure to properly answer the questions has resulted in significant problems for both the developer the LPA and other regulatory consultees, as all subsequent RM and DIS Applications have not provided them with the correct vehicle or opportunity to correct the situation.

2. Our second reason for saying that Planning Permission does not exist for the groundworks and remediation works is simply **that at the time the application was submitted and the appeal determined**, there was **no** knowledge of the existence of sink holes and dissolution features on the site. So the outline designs, layouts, statements about intentions and other materials both submitted and then approved neither saw a need for such work, nor approved such work or the consequences of those works e.g.a pumped surface water discharge system with significant on site storage facilities and tanks or the pumping of waste water to watercourses over a mile away or adding to the risk and volume of flooding already taking place in zone 2/3 flood zones in those locations and finally the grouting of the site, the vibro-compaction of the site and the very significant issues that will arise therefrom.

What is development?

Government Guidance on developments requiring Planning Permissions specifically refers to 'groundworks' as being inter alia, such an operation viz:

"Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in [section 55 of the Town and Country Planning Act 1990](#).

'Development' includes:

- building operations (eg structural alterations, construction, rebuilding, most demolition);
- [material changes of use of land and buildings](#);
- **engineering operations (eg groundworks)**;
- mining operations;

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- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwellinghouse for use as 2 or more separate dwelling houses “

This is further clarified by the guidance identifying works that do not need Planning Permission:-

“The categories of work that do not amount to ‘development’ are set out in [section 55\(2\) of the Town and Country Planning Act 1990](#). These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term ‘materially affect’ has no statutory definition, but is linked to the significance of the change which is made to a building’s external appearance.
- a change in the primary use of land or buildings, where the before and after use falls within the same use class.”

There is therefore no uncertainty at all, that a planning permission is required to permit the proposed groundwork works. There is also no doubt that the groundworks proposed are indeed an Engineering Operation.

The question therefore arises, has permission already been granted under P16/S0970/O? The Applicant has submitted both a legal opinion and also a barrister’s opinion which they say supports the suggestion that permission already exists, reciting a small number of cases to support this contention.

Why do we say that these Groundworks are not Authorised/permitted?

Put very simply, if these groundworks were not contemplated at the time the application was submitted and then determined, nor were they referred to in any plans, reports designs or other submissions, the works cannot have been approved. The LPA and the Inspector will all have assumed that because of the questions in the Application and the answers provided, that this was good building ground not requiring any special treatment or consideration. Again, that was not correct.

The additional works are of such magnitude and importance, with such wide reaching impacts that they cannot simply be ignored or pass through the system without proper scrutiny, they are groundworks, they do need planning permission and they do require full and proper scrutiny by the EA and others before being permitted/accepted in principle.

Whilst these groundworks are an Engineering operation, they are quite clearly not the Engineering Operation that was considered and approved for this site by the extant Planning Permission P16/S0970/O.

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The Precedents Provided by the Applicant

None of the precedents cited for the applicant can actually be considered as true precedents. It is simply wrong to suggest that P16/S0970/O allows the following engineering operations:- grouting the site to a depth of 16m via drilling steel pipes into the ground, filling and vibrating these pipes with a stiff concrete and fill material. and then the majority of the surface area of the site being vibro-compacted with unknown ramifications for the aquifer below.

That operation would be to do with stabilizing and remediating ground, and nothing to do with the later construction of houses on the site. Any development of any type of building on this site at the density levels suggested would require ground stabilization to first occur. That however was not apparent at the time of the planning application or appeal

This major engineering operation which is of such scale, would be a completely separate development project to the construction of dwellings upon the site. It was not envisaged in any shape or form as being necessary when the consent was granted, nor were the correct details designs and data provided to enable proper scrutiny to occur.

None of the subsequent applications dealing with either reserved matters or the discharge of conditions have raised the matter of the groundworks. This is why approval is now sought for a revised Construction Management Plan under application number P21/S4524/DIS, which does now also envisage these works. Its predecessor application P19/S0311/DIS, seeking earlier approval to a CMP, did not envisage these works at all.

Analysis of the Case Law Cited for the Applicant

A. The legal advice to the applicant says:

"The digging of foundations for a house will incidentally involve the extraction of relatively small quantities of minerals from the foundation trenches, but that is not a mining operation requiring a separate permission. If the site was hitherto an open field, a material change of use of the land concerned is involved; nevertheless the permission will be a grant for operational development, namely the erection of the dwelling house in question.

" No separate planning permission for the residential use is required.

Commentary

This paragraph infers that ground stabilisation work is part and parcel of constructing foundations. It is not, and it relates to a separate engineering operation which when completed will then have foundations built on top of those works. Both the submitted program and the method statements provided confirm that this is the case.

B. The West Bowers case:

The case referred to is misleading. It is a case relating to works on an agricultural holding and seeks to separate and distinguish between excavation for a reservoir and the removing of

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minerals as part of that operation. This is where the depth and extent of the proposed reservoir was always a known and expected depth. The LPA here misdirected itself.

Commentary

The mere fact that the farmers were able to sell the resultant minerals that were excavated as part of the construction process of this reservoir has no bearing on the primary purpose of the works, namely the construction of a reservoir to improve agricultural drainage.

Although minerals existed within the proposed excavation 'envelope' of depth for the reservoir, no separate planning permission was necessary for those works. The authority argued that the co-incidence of minerals being present changed the objective from the provision of a reservoir to one of mining minerals, which clearly was incorrect.

The decision handed down was therefore correct.

Those circumstances are wholly different to the current circumstances and factual matrix at Thames Farm. The grouting works are new and in addition to the previously approved/contemplated works. Had they been detailed or disclosed in the application, then the position would be completely different. This precedent is therefore not relevant

C. The Northavon case:

A similar situation applied in the Northavon case, where the dispute related to whether raising the height of agricultural land with fill material, in order to improve its drainage, constituted an operation to dispose of waste material.

Commentary

Again, the correct decision for that factual matrix and comprehensive application was applied. The purpose of the project was agricultural drainage, and not waste disposal.

D. The applicant's advice further states:

"In an inspector's decision it was held that a developer, in the absence of anything in a permission relating to levels, had a reasonable degree of freedom to determine the level of work "under-build"; further, the developer had a right to undertake all necessary reasonable works for the implementation of the planning permission in accordance with R. v Basildon DC Ex p. Grant Homes. However, in the case in question, large raised patios had also been constructed which were not within the approved drawings".

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Commentary

This item relates to a case of relatively minor changes in ground levels to achieve a finished floor level. It does not in any way relate to drilling holes to a depth of 16m, injecting concrete and fill material, vibrating the concrete and repeating that operation hundreds of times across a large proportion of the site. Once finished Taylor Wimpey will then apply vibro-compaction techniques across most of the surface area of a 5.5 HA site.

Again, the factual matrix is wholly different, as is the degree and extent of works, not to mention the significant impacts on hydrology, hydrogeology, the aquifers and the pumped surface water drainage, all of which are caused by the grouting and vibro-compaction works, and none of which have been fully and properly reviewed or scrutinised by the statutory consultees.

The Original Appeal Decision

The Appeal decision documentation (which is incorrectly shown on the Planning Portal entry for this site/application and relates to a different site entirely) makes no reference to any works of remediation or other significant groundworks, and nothing of this nature is referred to in any of the drawings or other supporting documents that form part of either the Application or the Inspectors decision. It is clear therefore that grouting was never contemplated when the outline approval was given.

At the time of the Appeal decision, the knowledge that the site had a myriad of dissolution features beneath it to a depth of 16m or more, simply did not exist, and was neither contemplated nor envisaged. The risks posed to the Aquifers was also unknown at that time, although knowledge of the local geology should have rung alarm bells/suggested otherwise. However, nobody appears to have considered this issue at all at the relevant time.

It was simply and naively thought/assumed, that the ground was good building ground and that conventional strip foundations would be used when the site was developed. The reason why this entire debate is taking place at all is because the owner of this site failed to do adequate due diligence in an area that is known to have a chalk sub-strata and or gravel beneath it and which also lies within a grade 1 Source Protection Zone for the adjacent bore holes and aquifers.

These simple indicators or 'red flags' should have resulted in the use and application of best practice development measures when submitting a Planning Application for the wholesale redevelopment of this site for residential use, but they did not do so, and worse still the relevant application forms were poorly completed and misleading.

1. Neither the original owner of this site nor Taylor Wimpey were able to establish whether the site could safely sustain the development proposals being put forward and that is very unfortunate. However, the fact remains that these fundamental errors in procedure/process do not give the current applicant the right to impose its will on SODC or the local residents affected by its plans. All the works need proper scrutiny and approval.

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2. The Planning Permission granted envisages conventional foundations being constructed when the houses are developed. Works to stabilize the ground prior to the construction of houses comprises a separate and different engineering operation entirely and is not automatically permissible.

Case Law for the LPA (As provided by Temple Bright)

We have attached 2 relevant case summaries:

1. [Coleshill & District Investment Co. Ltd. \[1969\] 1 WLR 746](#) , pp 756A-E; 760B-E
2. [Eatherley v Camden LBC, 2016 WL 06989230 \(2016\)](#).

These cases highlight the importance of degree and extent in the interpretation of what is development rather than the necessity to do groundworks before building houses on a/the site.

Whether or not a particular operation constitutes an engineering operation is a matter of judgment for the decision maker, based on the facts presented, or on inference from those facts ([Coleshill & District Investment Co. Ltd. \[1969\] 1 WLR 746](#) , pp 756A-E; 760B-E).

In the Eartherley case, the High Court allowed the appeal. LBC had misdirected itself before concluding that the proposed engineering works were not “a separate activity of substance” that required express planning permission. The CLOPUD was ‘quashed’ and the application resubmitted to LBC. In the case, the judge had to decide whether the construction of the basement involved engineering operations that amounted to a separate activity of substance.

Mr Justice Cranston held that in the context of an original “two up two down” terrace house in suburban London, the development of a new basement (where there is none) could amount to two activities, each of substance.

- The enlargement, improvement and alteration of the dwellinghouse.
- An engineering aspect of excavating a space and supporting the house and its neighbours.

The court held that is the position, even though the engineering operation was necessary to achieve the developer’s aim and was indivisible from it. If there was a separate engineering aspect of substance in the development, planning permission would be required from the LPA. Class A permitted development rights grant planning permission for the enlargement, improvement, and alteration of the dwellinghouse but not for the engineering aspect.

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It is a matter of fact and degree.

LBC should not have asked itself whether the engineering works were part and parcel of making a basement but whether they constituted a separate activity of substance. LBC needed to address both the:

- Nature of the excavation and removal of the ground and soil.
- Works of structural support to create the basement space.

The Importance of Due Diligence and 'Best Practice'

Unfortunately Taylor Wimpey's predecessors failed to undertake any significant ground investigations before they submitted their planning application to develop the site for a large residential development under P16/S0970/O. Equally the earlier applications for the same form of development (which were rejected on appeal) also failed in this regard. This was the overriding mistake in the processes and procedures that took place to secure consent, and were arguably a very long way from being 'best practice'.

Had adequate due diligence been done, the issues would have become visible, and the developer would have ensured that the risk remained with the vendor and required an amendment to the Planning or a fresh application be made as a pre-condition to handing over the agreed price and completion of the sale.

What is the Applicant currently permitted?

It is illogical to suggest that any or all Outline Planning Permissions automatically give the land owner the right to do whatever it takes to make its land fit for development. There must be a demarcation line, which is logical and sensible, and that in our opinion, and it seems that of SODC's Head of Planning's must be the distinction between work down to floor and foundation level, and work below that level.

This situation is analogous to a contaminated site where major groundworks are needed, to make the site developable, and the necessary consents to dig deep and rectify are required and subject to all normal planning and health and safety scrutiny. A developer would not contemplate doing such works without the necessary permissions in place.

Works of this nature cannot simply escape the entire planning system by the suggestion that a consent to build also gives the right to indiscriminate works below ground to any level or depth that may be necessary.

There must be, and there is a control mechanism, where Government guidance specifically refers to this and says that 'groundworks' require a planning consent.

<https://www.gov.uk/guidance/when-is-permission-required>

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It therefore must follow that details of such work need to be submitted with and as part of a Planning Application. Where this does not occur, then the consequences are very significant as in this instance.

The Method Statement

As far as the updated (Revision D) version of the Method Statement produced for Taylor Wimpey by Vertase FLI is concerned, I am enclosing a report from JBA Engineers dated October 2021, which has reviewed both the original 'final document' submitted with P20/S2808/DIS and this later revision.

JBA is a specialist engineering advisor to the 3 Councils impacted by this matter and also to TFAG and local residents. This report highlights a number of deficiencies in the information provided by the applicant not least being the absence of any up to date and accurate report on the Hydrology / Hydrogeology of the site, its hinterland and the flooding consequences of the grouting and development proposals.

The current report is almost identical to the earlier final report submitted in support of P20/S2808/DIS but it has been cosmetically updated:-

- All references to "ground improvement" works have been changed to "ground stabilisation" works.
- In section 1 and 2, reference to "the construction process" is changed to "the foundation works".
- Insertion in section 2 of the wording that the works are "necessary to stabilise the areas affected by dissolution"

Other than these changes, the main document is identical to the earlier version issued to SODC. It references the same appendices as the September 2021 version, but the new appendices have not been uploaded to the planning portal – therefore we would have to assume that there has been no change to these.

The only purpose of the above changes in references that we can think of, is that this may result in the reader considering that the works might be considered to be part of the overall foundation works for the site. This is not correct, however, and the report clearly identifies this as a separate and distinct project to that of the construction of foundations which are part of the second project comprising the building of houses upon the site.

Conclusions

The only way to remedy the early errors made at Thames Farm is to apply for a separate Planning Permission to allow the groundworks project to take place and which will then bring about the full and necessary scrutiny of bodies such as the EA and others as indicated above.

The applications for an LDP and also the revised CMP should therefore be rejected. If a further application is made for Planning Permission to proceed with the grouting works, then once this has

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been scrutinized, and if the project is likely to be permitted, adjustments should be made to address the detailed comments made by JBA in their various assessments of this project.

Some of their particular concerns in the reports are:-

1. Without a full assessment and understanding of the potential risk of contamination of the aquifer (and the PWS) during the works it is unclear how the risks to the aquifer and nearby property and residents can be monitored, managed and mitigated.
2. The grout will eventually settle and harden, but the applicant has little or no control of the movement of grout once it is within a void.
3. Disturbance to this aquifer should be considered particularly risky because it is the sole source of water for the Henley Water Resource Zone.
4. There is no consideration of how the grouting works will influence groundwater flow within the chalk. There appears to be significant risk that groundwater infiltrating from the surface will flow around the grouted volumes and, over time, result in dissolution of the currently intact chalk.
5. The long-term risk of dissolution from surface water and potential leakage from water pipes should be assessed.
6. The chemical composition of grouting material would need to be assessed in a full Hydrogeological Impact Assessment – The composition of any leachate from the grout material should be specified within the HIA and whether this could impact upon the aquifer water quality arriving at the PWS, especially if there is significant rainfall and recharge during the grouting works.
7. The risk to trees meant to be protected is identified: “The main document (section 11) states that “no ground improvement works are proposed within root protection areas.” Whilst this could be achieved at ground level by following the tree protection plan, it is not stated how subsurface grout will be prevented from spreading and encroaching into the root protection areas. Indeed, in some locations, the areas requiring compaction grouting appear to encroach into the root protection areas.

In addition, any consent if granted should be heavily conditioned to prevent damage, flooding and nuisance to existing property and local residents both nearby the site and also those downstream of any discharge point.

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I look forward to hearing from you that SODC is going to reject both of these current applications in accordance with the advice previously issued by the Head of Planning on 7 May 2021.

Your sincerely,

SIGNED ELECTRONICALLY

Peter Boros

Chairman,

Thames Farm Action Group

Attachments:

JBA Report October 2021

Case Report Eatherley v Camden LBC

Case Report Coleshill and District Investment Co Ltd v MOHLG