
APPLICATION NO.	P21/S4749/LDP
APPLICATION TYPE	LAW. DEV. (PROPOSED)
REGISTERED	18.11.2021
PARISH	HARPSDEN
WARD MEMBERS	Leigh Rawlins David Bartholomew
APPLICANT	Taylor Wimpey UK Ltd
SITE	Land at Thames Farm, Reading Road, Shiplake
PROPOSAL	Application for a Certification of Lawfulness for Proposed Use or Development to establish that proposed ground stabilisation works, necessary to stabilise the areas of the site affected by dissolution and which are to be undertaken as part of the foundation works, and which comprise compaction grouting, surface ground compacting and associated works, are lawful pursuant to planning permission P16/S0970/O.
OFFICER	Emma Bowerman

1.0 INTRODUCTION AND PROPOSAL

- 1.1 The application site is a 5.6ha field that was formally in agricultural use as part of Thames Farm. The site has a long and complex planning history. Of most relevance to this application is an outline permission for 95 dwellings (P16/S0970/O), which was allowed at appeal in August 2017. Reserved matters approval for this scheme was granted in May 2019 (P19/S0245/RM).
- 1.2 All but one of the pre-commencement conditions on the outline permission were agreed by September 2019. The outstanding pre-commencement condition required the approval of a drainage strategy. Despite having not secured approval of a drainage strategy, the applicant unlawfully implemented their planning permission by constructing part of the site access.
- 1.3 The applicant then applied for a non-material amendment to change the trigger for the approval of the drainage strategy. This changed the requirement for a drainage strategy to be approved prior to the commencement of the development, to a requirement that no further development shall take place, beyond the access works already undertaken, until a drainage strategy is approved. This non-material amendment retrospectively made lawful the applicant's otherwise unauthorised start on the development.
- 1.4 The applicant has subsequently submitted two applications for the approval of a drainage strategy, and both were withdrawn as an acceptable solution to drain the site has not been found. This is because there are chalk dissolution features on site which require stabilisation and the necessary works to stabilise these features prevent the permitted scheme from being drained through on-site infiltration.
- 1.5 Based on the information presented in the applications for the approval of a drainage strategy, the council advised the applicant that the scale and extent of the ground stabilisation works go beyond the scope of the planning permission for 95 homes and amount to a separate engineering operation. The applicant has therefore submitted

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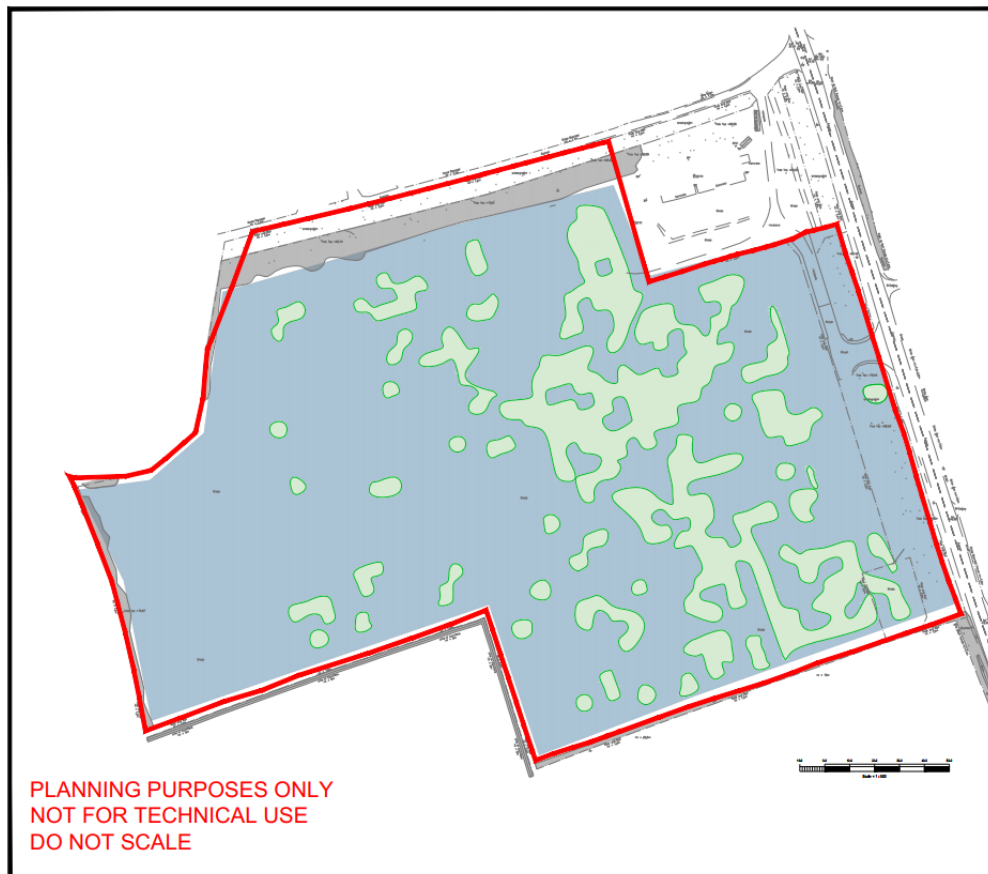
this application for a Certificate of Lawfulness, to request confirmation from the council that the proposed ground stabilisation works are lawful.

- 1.6 This application for a Certificate of Lawful Development is made under Section 192 of the Town and Country Planning Act 1990 (as amended). It seeks to establish that the *“proposed ground stabilisation works, necessary to stabilise the areas of the site affected by dissolution and which are to be undertaken as part of the foundation works, and which comprise compaction grouting, surface ground compacting and associated works, are lawful pursuant to planning permission P16/S0970/O.”* If the proposed development were lawful, it would not require planning permission from the Local Planning Authority (LPA).
- 1.7 The application is accompanied by several supporting documents including:
- Outline Project Method Statement and Appendices
 - Gowlings WLG Legal Opinion (May 2021)
 - Morag Ellis QC Counsel advice (August 2021)
- 1.8 The proposed works consist of compaction grouting and surface compaction to stabilise the ground, including injecting dense mortar grout into relaxed and disturbed ground to improve ground strength. Additional details provided in the Outline Project Method Statement are:
- The areas impacted by relaxed and disturbed underlying ground conditions associated with chalk dissolution features cover around 1.1ha of the 5.6ha site (roughly 20% of the development area).
 - Before works start, topsoil will be excavated and stockpiled on the site.
 - The compaction grouting works involve drilling a series of boreholes across the identified areas at approximate 3 – 4m spacing and injecting a stiff grout to provide strength and compaction of the weakened subsurface. The holes will be drilled to a predetermined target depth into the area to be treated (typical depths of between 10m and 13m bgl and a max depth recorded as 16m bgl).
 - Once the target depth is reached, a stiff mortar grout is then delivered into the hole at a prescribed pressure where it produces an expanding grout bulb which rapidly compresses the loose / weak ground around the point of injection.
 - The grout will consist of a mixture of Sulphate Resisting Portland Cement, sand, pea gravel and bentonite (or an alternative).
 - The grout will be batch mixed at a manufacturing plant nearby and transported to the site in wet form.
 - Grout injection works will not be undertaken within 2m of the mapped groundwater surface.
 - To ensure the grout injection works result in the required level of compaction, tests will be carried out to confirm the improvement in the strength of the consolidated ground. This will be achieved by attempting to inject further grout at selected locations.

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- Following compaction grouting, the grout injected will comprise around 6 to 12% of the treated volume of ground, whereas the remaining 88 to 94% will be re-densified, natural soils. This means that following treatment, the grouted areas will comprise less than 2% of the entire site (assuming a uniform treatment profile).
- The top 3m of material across the site will then be compacted using a vibro-compaction method (surface compaction) to recompact any soft spots.
- The entire site is proposed for surface compaction treatment except for the water main easement and the woodland planting area. [See note below at 1.10](#)
- It is anticipated that the final finished level will be between 150mm to 300mm lower than the current level across the entirety of the treatment area. [See note below at 1.10](#)
- Following the completion of the ground remediation, levels will be adjusted during the construction of the new homes to meet the approved planning levels.
- The ground stabilisation works are anticipated to take around 35 weeks to complete. It is anticipated that the ground improvement and construction works will be undertaken concurrently but with a staggered start of approximately 20 weeks.

1.9 The plan reproduced below is included in the appendices to identify the areas proposed for compaction grouting and/or surface compaction:

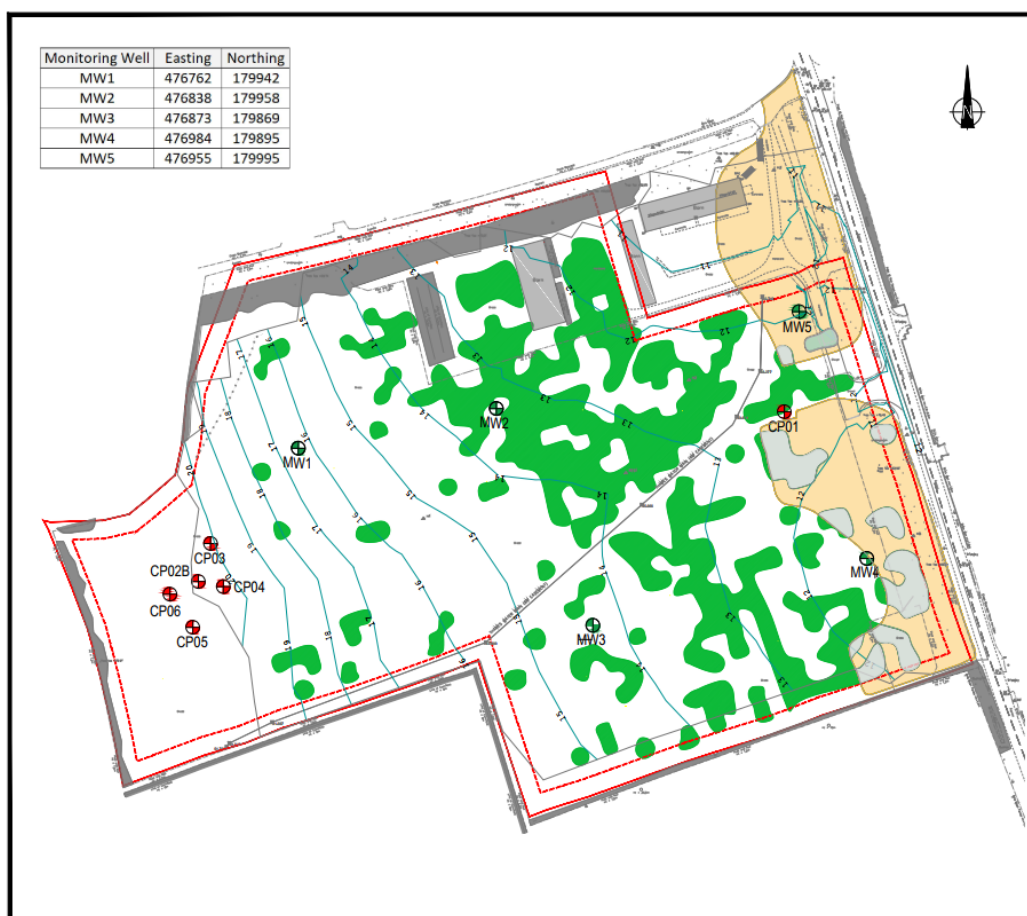


The key states that the light green areas are the locations requiring compaction grouting and surface compaction. And the blue shows locations requiring surface consolidation. The term surface consolidation is not referred to in the Outline Project Method Statement and so, based on the information submitted, it seems that the terms surface consolidation and surface compaction are interchangeable.

1.10 *Note*

There are some discrepancies in the information presented in the Outline Project Method Statement and the various appendices. For example, the main body of the Method Statement states that the “*entire site is proposed for surface compaction treatment except for the water main easement...*” and “*Surface compaction will not be undertaken within the easement of underground utility services.*” However, the plan above does not show the land left untreated in the vicinity of the water main.

Furthermore, the plan above shows compaction grouting within the woodland area (along the road). Yet the main body of the Method Statement states that compaction grouting will not be used within the area designated for woodland planting. And in the drawing titled ‘Proposed Monitoring Well Locations’ the areas of disturbed ground in the woodland planting area are shown as not requiring compaction grouting (indicated in grey on the plan below, with the woodland planting area shown in peach):



In addition, the Method Statement advises that “*the final finished level will be 150mm to 300mm lower than the current level across the entirety of the treatment area*”. However, this conflicts with the information in the Woodland Project Plan which states that there will be “*No changes in ground levels within the RPA of retained existing trees.*”

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 **Harpsden Parish Council** – No comments received at time of writing.

2.2 **Henley-on-Thames Town Council** – Recommend refusal as this would constitute major works which require planning permission. Concern over the impact on the contamination of ground water.

2.3 **Shiplake Parish Council** – Object as the ground remediation and stabilisation are not work that was even contemplated at the time that Thames Farm received planning permission.

2.4 **The Henley Society** – Recommend refusal. The ground stabilisation was not envisaged under the original application and the applicant should be required to submit a fresh application for the whole development. Raised concern with the impacts of the works, including inconvenience to local residents through HGV deliveries, that concrete is a major source of CO₂, and that drinking water could be contaminated.

2.5 **Chiltern Society** – Recommend refusal as they do not accept that the proposed ground stabilising works can be considered as "reasonable works" permitted pursuant to planning application P16/S0970/O nor as being ancillary to the main purpose of the application because of their scale, complexity and collateral risks, which could have far reaching, long-term and irreparable adverse consequences for the local area and the environment, none of which was evident or considered in the original application.

2.6 **Thames Farm Action Group (representing residents)** – Object and raised the following concerns:

- There is no planning permission in place to undertake a major ground remediation project.
- The original outline planning application envisaged a drainage strategy that cannot be implemented and there were assumptions made that resulted in incorrect details being submitted in support of the original application. This means that some matters were not adequately scrutinised.
- At the time the outline planning permission was granted, there was no knowledge of the dissolution features and so the subsequent reserved matters consent cannot be implemented without unexpected consequences of the ground stabilisation works and a scheme to pump surface water off-site.
- The ground works represent an engineering operation that was neither considered or approved through the outline planning permission.

2.7 **Neighbour Representations** – 121 received all in objection and raising concerns similar to the representation received from Thames Farm Action Group:

- The groundworks were not contemplated when the outline planning permission was granted.
- There is no planning permission in place for the groundworks

3.0 **RELEVANT PLANNING HISTORY**

3.1 [P20/S2808/DIS](#) - Withdrawn (26/10/2021)

Discharge of condition 11 (Drainage) on planning application P16/S0970/O

[P20/S3241/LDE](#) - Approved (06/11/2020)

That the development has commenced for the purposes of condition 2 of permission P16/S0970/O and the permission is therefore an extant permission which may be carried out to completion in accordance with the terms of the planning permission.

[P20/S2825/EX](#) – Approval granted (28/08/2020)

Additional environmental approval for an extension of time to application P16/S0970/O.

[P20/S0715/DIS](#) - Withdrawn (10/06/2020)

Discharge of condition 11 - Drainage Strategy on planning application P16/S0970/O.

[P20/S1303/NM](#) - Approved (06/05/2020)

Non-material amendment to planning application P16/S0970/O for amendment to wording of condition 11 concerning drainage

[P19/S0245/RM](#) - Approved (23/05/2019)

Reserved Matters for 95 dwellings (appearance, landscaping, scale and layout) pursuant to outline application P16/S0970/O

[P16/S0970/O](#) - Refused (14/09/2016) - Appeal allowed (02/08/2017)

Outline Planning Application for up to 95 dwellings and associated public open space and landscaping. Means of access and strategic landscaping not reserved

[P13/S2184/O](#) - Refused (30/10/2013) - Appeal dismissed (20/05/2015) but then quashed on statutory challenge

Outline application for up to 110 dwellings (access not reserved).

4.0 **POLICY & GUIDANCE**

4.1 Since the determination of whether the proposed development is lawful is a matter of planning law and fact, the Development Plan and its planning policies are not relevant considerations for this application.

4.2 Instead, the following **legislation** is of relevance:

- Town and Country Planning Act 1990 (amended)

4.3 Also of relevance is the Planning Practice Guidance for Lawful Development Certificates:

<https://www.gov.uk/guidance/lawful-development-certificates>

6.0 **ASSESSMENT**

6.1 Section 192 of the Town and Country Planning Act 1990 (as amended) allows any person to apply to the LPA to obtain a decision on whether a proposed use or development of land would be lawful for planning purposes or not. Lawful development is development against which no enforcement can be taken and where no enforcement notice is in force, or for which planning permission is not required.

6.2 In determining an application for a Certificate of Lawful Use or Development the LPA needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant to the determination of this type of application and can form no part of the assessment as to whether a Lawful Development Certificate should be granted.

6.3 The applicant contends that the proposed ground stabilisation works, necessary to stabilise the areas affected by dissolution, would be lawful on the basis that they are permitted pursuant to planning consent P16/S0970/O and so are within the definition of lawful operations set out in section 192 of the Town and Country Planning Act. The supporting documents accompanying the application expand on the applicant's position and state that *"...there can be no question that the proposed ground remediation is ancillary to the residential development. It is not a separate activity of substance and*

the objective purpose is ground remediation to ensure solid foundations for the permitted residential development.”

- 6.4 Having thoroughly considered the information accompanying the application, I respectfully disagree with the applicant’s position; the proposed ground stabilisation works are clearly a separate activity of substance. The proposed ground works would not be ancillary to the development of 95 new homes but rather a development of substance in their own right. The proposed ground stabilisation works represent a separate engineering operation that goes beyond the scope of the outline permission and requires planning permission.

Further discussion

- 6.5 The applicant has submitted legal advice in support of their application, and this presents the view that *“The proposed works are simply one technique, albeit specialised, to be applied in order to produce foundations for the permitted residential development. That work will be integral to the development and the inspector’s decision must be understood as intended to authorise all necessary below ground works to achieve a sound development”*.
- 6.6 The Inspectors decision does not authorise a limitless amount of below ground development to alter the site to make it available for development. The Inspector did not intend to authorise the proposed ground stabilisation works as he was completely unaware of them. The documents submitted with the outline planning application provided no indication that there were dissolution features on site or that there was a prior need to carry out significant works to stabilise the ground.
- 6.7 Furthermore, the information before the Inspector included a Flood Risk Assessment that stated that surface water *“will be disposed of at source by means of infiltration-based SUDS facilities”*. We now know that, because of the implications of the proposed grouting, it is not possible for the 95 homes permitted on this site to be delivered with a surface water scheme that infiltrates on site. Therefore, not only was the Inspector unaware of the proposed ground stabilisation works, but he was also unaware of the implications of the groundworks, such as pumping surface water off-site.
- 6.8 So far as the applicant’s assertion that the proposed ground stabilisation works are simply part of the foundations, I note that the Outline Project Method Statement (Rev D) has recently been revised to include reference to foundations. The Outline Project Method Statement was also submitted to support application P20/S2808/DIS and was titled Rev C (Final) 13 September 2021. The amended version to accompany this application for a Lawful Development Certificate is Rev D (Final) 26 October 2021.
- 6.9 The September 2021 version refers to ground works as *“part of the site enabling works in preparation for residential development”* whereas the October 2021 version refers to them as *“as part of the foundation works for the proposed development.”* These retrospective changes to the Method Statement do not alter the explanation of how the ground works would be carried out and there is no reference in the technical details to foundations. The explanation of the works in the Method Statement indicate that the groundworks are a separate activity to the construction of the foundations. The Ground Stability Assessment, which also accompanies this application, recommends that *“given the identified magnitude and lateral extent of karstic ground conditions across the site”* that *“ground stabilisation works are undertaken prior to the construction of foundations and infrastructure.”*
- 6.10 The addition of the references to foundations in the updated Outline Project Method Statement have therefore not altered my view on the extent of the ground works.

Based on the scale of ground works proposed, I consider them to be a separate activity of substance well beyond and entirely separate to the construction of foundations.

- 6.11 The proposed ground stabilisation works are undoubtedly an engineering operation in their own right. Given also, the lack of anything in the outline permission to the explicit effect that they are authorised by that grant, I am of the view that the proposed ground stabilisation works require planning permission and would not be lawful development.

7.0 **CONCLUSION**

- 7.1 This report considers whether the proposed ground stabilisation works would be a separate activity of substance to the erection of up to 95 dwellings granted by the outline permission.

- 7.2 As evidenced in the documents accompanying the application the proposed ground stabilisation works would be an extensive operation. In my opinion the proposed engineering operations required to stabilise the ground are entirely different in character and extent to those required to provide foundations. The ground works are a matter of substance and are not merely ancillary to the construction of the permitted dwellings. None of the information in the submitted Legal Opinion or Counsel Advice (including the case examples) persuade me to take a different view.

- 7.3 As such, a Certificate of Lawful Development should not be granted as the proposed ground stabilisation works would not have been lawful within the meaning of section 192 of the Town and Country Planning Act.

8.0 **RECOMMENDATION**

It is recommended that a Certificate of Lawful Development for application P21/S4797/LDP is refused.

Recommended wording for the decision notice:

The South Oxfordshire District Council hereby certify that on 18 November 2021 the undertaking of the above proposed development would not have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

The proposed ground stabilisation works are not authorised by the existing planning permission; they are not part of the foundation works nor ancillary to the development granted by the outline permission for 95 homes on the land edged red on the attached plan. The proposed groundworks are of a scale and extent that they represent a separate activity of substance and are an engineering operation beyond the construction of foundations. The proposed ground stabilisation works therefore require planning permission from the Local Planning Authority.

C D Scotting 13/01/22

Delegated Authority Sign-Off Officer