

Dated 13th July 2023

TAYLOR WIMPEY UK LIMITED

GROUND OFS OF APPEAL

**in relation to development at Thames Farm
Shiplake**



GROUNDS OF APPEAL

1. The Appeal relates to land at Thames Farm, Shiplake. Outline planning permission (Application Reference P16/S0970/O) ("the Outline Planning Permission") was granted on appeal for 95 dwellings and associated public open space and landscaping. Taylor Wimpey West London ("TW") acquired the site and secured reserved matters approval ("RMA") in May 2019.
2. Detailed site investigation has revealed that there are significant dissolution features across part of the site which require grout remediation. This would involve stabilising of affected ground in order to reduce the potential for future ground movement due to the dissolution features in the chalk bedrock.
3. The Appellant submitted an Application for a Certification of Lawfulness for Proposed Use or Development, which is the subject of the Appeal *"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"* (Application Reference P21/S4749/LDP (**"Certificate of Lawfulness Application"**)).
4. On 13th January 2022 the LPA issued a Decision Notice refusing the Certificate of Lawfulness Application. There is a single reason given for the refusal, namely:

"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 nature, 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".
5. The Appellant's Grounds of Appeal are:
 - i) The undertaking of the ground stabilisation works by the Appellant as a matter of planning law would amount to lawful development, as they are authorised by the Outline Planning Permission and are part of the foundation works ancillary to the development granted by the outline permission for 95 homes. The works are not a separate engineering operation requiring the grant of planning permission.
 - ii) The Outline Planning Permission authorises both the construction of the dwellings and any operational development involved in creating open space and landscaping, and their use. Section 75(2) of the Town and Country Planning Act 1990 applies to authorise the residential use. The Outline Planning Permission is a "bare" Outline Planning Permission with all matters reserved save for access. The only drawings which were submitted for approval and which were approved were drawing nos. C11748.16.01 (Location Plan), C11748.16.701 (Landscape Strategy), C11748.16.705 (Tree woodland planting), C11748.16.801 (Strategic Landscape Plan) and 3537/201 Rev. N. (access works) Condition 3). None of these drawings contain any material relevant to foundations.

- iii) As noted in the two legal opinions, which accompanied the Certificate of Lawfulness Application, the test of whether or not an activity is incidental to development authorised by a planning permission or alternatively, an activity of substance, was enunciated and applied in the case of *West Bowers Farm Products Ltd v Essex CC [1985] 50 P&CR 368*, applying the approach of the Divisional Court in *Northavon DC v Secretary of State for the Environment [1980] 40 P&CR 322*. These cases concerned, respectively, minerals and waste. A further relevant case, decided at around the same time and dealing with residential development, is *R v Basildon DC., ex.p Martin Grant Homes Ltd [1987] JPL 863*.
- iv) The Martin Grant Homes decision concerned a full grant of permission for residential development which had been granted on the basis of certain levels marked on plans. At Building Regulation stage, however, the Council's Building Control department had required higher levels in order to approve a gravity drainage scheme. The Council as Local Planning Authority argued that the new levels were not authorised by the planning permission. The Court disagreed, on two bases: firstly, that the Council as Local Planning Authority was deemed to know of its decision under Building Regulations and, secondly, that the local planning authority, in granting permission, must have intended that all necessary and reasonable works for implementing the permission were incorporated within the general grant of permission. This case has been applied in a modern appeal decision on a Certificate of Lawfulness: APP/C3430/X/17/3176413, High House, Poplar Lane, Cannock WS11 1RS.
- v) To establish ground conditions requires intrusive investigations which ordinarily follow the grant of planning permission. When undertaking construction of sites, there are often unknowns that are discovered during the construction process including contamination and land stability matters. These issues are resolved and do not generate the need for a new planning application.
- vi) Where site remediation is required and the likely remediation is known, one simply does not see this activity as part of the description of development. Similarly methods of construction such as the type of piling or foundations are not stipulated. It is necessary in the case of any new building of substance – certainly one to be occupied for residential purposes - to construct it on adequate foundations. The precise regulation of foundation construction is covered by Building Regulations. The type of foundation will vary according to ground conditions and the size/design of the building in question and its proposed end use. Site remediation/stabilisation is a necessary and reasonable step that is ancillary to the permitted development.
- vii) As stated in the NPPF, Para 120, 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Clearly, the Appellant must build houses which are sound and safe for human habitation and the Appellant intends to undertake the necessary remediation works to ensure that the development is safe. These works are ancillary to the consented development.
- viii) The Appellant has a right to undertake all necessary reasonable works for the implementation of the planning permission in accordance with the case of *R. v Basildon DC Ex p. Grant Homes*. The Appellant has, therefore, the right to remediate and stabilise the site as is reasonably necessary to implement the planning permission and without the ground stabilisation works being regarded as a separate engineering operation. The construction activity associated with the ground stabilisation works will be controlled through the Construction Management Plan required by the Outline Planning Permission.

ix) In terms of the nature and scale of the works:

- (1) The ground stabilisation works are to be undertaken as part of the construction of foundations. The phasing of the foundation works including the ground stabilisation aspects are depicted on the Indicative Foundation Drawing included with the Appeal Documents. The objective purpose of the ground remediation is to ensure solid foundations for the permitted residential development.
- (2) The proposed works consist of compaction grouting with the aim of stabilising the disturbed and relaxed ground associated with the dissolution features. Compaction grouting involves injecting a dense mortar grout into the relaxed and disturbed ground to redensify loose, granular areas of the ground, thereby reducing pore spaces and improving the ground strength. Before ground improvement works start, topsoil will be excavated and stockpiled on the site.
- (3) The compaction grouting works then comprise drilling a series of boreholes across the identified areas at approximate 3-metre spacing and injecting a stiff mix grout to provide strength and compaction of the weakened subsurface. The Appellant will demonstrate that the area of the site to be grouted is estimated as 11,000 m², of a total of 56,000 m² – less than 20% of the site. The upper 3 m of the soil profile will not be affected by grouting. Following compaction grouting, the shallower soils across the site (<3 metres depth) will be compacted using dynamic compaction methods to recompact any soft spots (i.e. areas affected by dissolution features) to densities similar to unaffected ground conditions. Once the compaction grouting and dynamic compaction is complete, the topsoil will be replaced across the site.
- (4) There will also be other elements of ground works taking place in conjunction, such as for the on-site roads and drainage and a copy of the overall construction programme is included as part of the Appeal documents.
- (5) The ground remediation works will not have any materially greater effect on the environment which would suggest that they should be treated as works of scale. In this regard a traffic impact assessment has been produced to inform the Appeal and is included with the Appeal Documents. This assessment confirms that the vehicle movements associated with the ground stabilisation works are likely to be an average of 15 lorries a day, 30 movements. The vehicle movements will be on an established HGV route and would represent a negligible perceptible change in the environment.
- (6) The site lies approximately 130 m from the Harpsden Water Treatment Works, where groundwater is abstracted from the Chalk aquifer from two boreholes for public water supply. A Hydrogeological Impact Assessment has been produced which considers whether it is possible that grouting the ground could have an effect on how rainfall infiltrates down to the water table and also how water flows through the ground towards the boreholes. It also investigates the possibility that grouting could create turbidity, or cloudiness, in the water supply, by creating a suspension of fine particles in the water. The Hydrogeological Impact Assessment demonstrates that the ground stabilisation works will have no effect on the nearby groundwater abstraction borehole.

6. In summary, there can be no question but that the proposed ground remediation is ancillary to the residential development. It is not a separate activity of substance or scale and the objective purpose is ground remediation to ensure solid foundations for the permitted residential development. The grouting remediation is not, therefore, a separate engineering operation requiring the grant of planning permission. The Appeal should, therefore, be allowed and the Certificate of Lawful Development granted.