



Appeal Decision

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/Q3115/X/23/3325922

Thames Farm, Reading Road, Shiplake, Oxfordshire RG9 3PH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Taylor Wimpey West London against the decision of South Oxfordshire District Council.
 - The application ref P21/S4749/LDP, dated 18 November 2021, was refused by notice dated 13 January 2022.
 - 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 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, pursuant to planning permission P16/S0970/O.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposed development from paragraph 1.3 of the supporting document submitted with the application as the form did not include a description of the proposal. As the decision turns on a legal matter, a site visit was not necessary in order to determine the appeal.

Background

3. Outline planning permission was granted on appeal¹ in August 2017 to develop the site for up to 95 dwellings and associated public open space and landscaping. Strategic landscaping was for consideration, as well as the vehicular access to the site. Landscaping within the site was reserved for future consideration.
4. The permission was subject to 11 conditions. These include that the development shall be carried out in accordance with the approved drawings, the submission of a construction management plan (CMP), a construction environment management plan (CEMP), and a drainage strategy. The drainage strategy was required by Condition 11, which required the submission and approval of the drainage strategy prior to the commencement of development.
5. In May 2019, reserved matters (appearance, landscaping, scale and layout) were approved². This was subject to a further six conditions. These included

¹ Ref APP/Q3115/W/16/3161733

² Ref P19/S0245/RM

that the development be carried out in accordance with the details shown on the approved drawings, which were listed in the condition.

6. In May 2020 a non-material amendment to planning permission P16/S0970/O was approved, which altered the wording of Condition 11 so that it allowed for the provision of a vehicular access to the site prior to the submission and approval of the drainage strategy. In November 2020 a lawful development certificate was issued confirming that the development permitted by P16/S0970/O had lawfully commenced. Two applications were also made to discharge the drainage strategy condition but both were withdrawn.
7. The application sought confirmation that ground stabilisation works would be lawful under the terms of the outline planning permission ref P16/S0970/O. This is on the basis that they would be normal enabling works that would be ancillary to the approved development due to their scale and duration, such that they would not be separate works of substance.
8. The Council refused the application on the basis that the works are not authorised by the planning permission. In their view the works would not be part of the foundation works nor would they be ancillary to the development granted by the outline permission. The nature and scale of the works is such that they would be a separate activity of substance and an engineering operation beyond the construction of foundations.
9. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests and the planning merits are of no relevance. The burden of proof lies with the appellant, who must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful. The decision turns on whether it would be lawful to undertake the ground stabilisation works.
10. The appellant has the opportunity to support their grounds of appeal through the submission of additional documents. It is not therefore the case, as suggested by third parties, that the additional material provided with the appeal should be disregarded.

Relevant legislation and case law

11. Section 55(1) of the 1990 Act defines the term 'development'. It includes engineering operations in, on, over or under land but does not define the term 'engineering operations'.
12. Case law³ has established that works that are required to implement a planning permission may include other activities that may be acts of development in their own right. Whether they are covered by the planning permission that has been granted will be a matter of fact and degree. *Northavon* established that the purpose of the works is a relevant factor. In that case, on the basis that the object of the work was an operation to improve the agricultural quality of the land, it was found, on its facts, not to involve the change the use of the land for the disposal of waste.

³ Northavon DC v Secretary of State for the Environment [1980] 40 P&CR 322

13. *West Bowers Farm Products*⁴ established that it is also a question of scale, so that it is a matter of fact and degree in each case. In that case, the extraction of minerals in order to create a large reservoir was found to be a mining operation followed by an engineering operation, and therefore not covered by agricultural permitted development rights. Where there are two separate activities of substance, one activity may not be merely ancillary to the other, even where the one is necessary for the other.
14. In the case of *Martin Grant Homes*⁵, the local planning authority was deemed to have had knowledge of the Building Regulation approval already granted, which indicated that the house floor levels would need to be raised for drainage purposes, even though this was not shown on the drawings permitted by the Planning Committee. Furthermore, the judgement states that the planning authority must have intended that all necessary and reasonable works for the implementation of the permission were being incorporated within the general grant of consent. It goes on to state that it is of great significance that it was a full planning consent. Moreover, there was no condition prohibiting the applicant from adjusting the levels.
15. In *Eatherley*,⁶ it was established that what needs to be considered is whether an activity has planning impacts that need to be considered in order to decide whether it amounts to a separate activity of substance. This was in relation to the operation of Class A Part 1 Schedule 2 of the GPDO⁷ concerning the excavation of a basement and was therefore concerned with the ordinary rules of statutory interpretation, rather than the interpretation of a planning permission granted by a local planning authority. Nonetheless, it is relevant that it was found to be a matter of planning judgement as to whether the engineering operation needed to build the basement was a separate activity of substance requiring its own planning permission. At some point, the excavation, underpinning and support for a basement becomes an activity different in character from the enlargement, improvement and alteration of the dwellinghouse. In order to make this judgement, details of the engineering works involved are required. The planning judgement requires the decision maker to have sufficient information as to the nature of the works involved.

Reasons

Nature and scale of the works

16. The nature and scale of the works is described in some detail in the appeal submissions. The design of the proposed ground stabilisation works and foundations is shown on the Indicative Foundation Construction Method⁸ (IFCM) drawing. Broadly, the works consist of compaction grouting which involves injecting a dense mortar grout, composed of naturally occurring materials, into the relaxed and disturbed ground to re-densify loose, granular areas, reducing pore spaces and improving the ground strength.
17. The Outline Project Method Statement⁹ (OPMS) sets out that before ground stabilisation works start, topsoil will be excavated and stockpiled on the site.

⁴ *West Bowers Farm Products Ltd v Essex CC* [1985] 50 P&CR 368

⁵ *R v Basildon DC., ex.p Martin Grant Homes Ltd* [1987] JPL 863.

⁶ *Eatherley v London Borough of Camden*, 2016 EWHC 3108

⁷ *Town and Country Planning (General Permitted Development) (England) Order 2015*

⁸ Drawing number A253-SK29 June 2023 Revision P2

⁹ Vertase FLI Report Number 1827TAY Rev D 26 October 2021

The compaction grouting works involve drilling a series of boreholes across the identified areas at approximate 3 to 4-metre spacing and injecting a stiff mix grout to provide strength and compaction of the weakened subsurface. The grout will be batch mixed at a manufacturing plant nearby and transported to the site in a wet form. The area of the site to be grouted is estimated as 11,000 square metres, or approximately 20% of the total site area of 56,000 square metres. The upper 3 metres of the soil profile would not be affected by grouting. The shallower soils across the site (less than 3 metres in depth), would be compacted using dynamic compaction methods to recompact any soft spots. Once the compaction grouting and dynamic compaction is complete, the topsoil would be replaced across the site.

18. A Ground Stability Assessment (GSA) by Stantec¹⁰ indicated that disturbed ground was often encountered at typical depths of between 10 metres and 13 metres below ground level (bgl). The Hydrogeological Impact Assessment (HIA) for ground improvement works¹¹ states (section 3.2) that the target depth of the grouting is between 10 metres bgl and 15 metres bgl.
19. The works will take approximately 35 weeks, with some overlap with the subsequent construction works. The grouting will require the importation of 10,700 cubic metres of pre-mixed grout with approximately 30 lorry movements a day for 20 weeks.
20. The ground stabilisation works have clearly been planned and would be supervised by a person with engineering knowledge. Due to their scale and nature, the evidence leads me to conclude that they are engineering works as defined in section 55(1) of the 1990 Act and are an act of development.

The outline planning permission and reserved matters

21. It is common ground that neither the foundation details nor the ground stabilisation works were indicated on any of the drawings approved with the outline application or as reserved matters. However, there are no conditions attached to either the outline consent or the reserved matters approval specifically precluding the ground stabilisation works. It would normally be expected that houses require not only foundations but some preparatory ground works, and the detailed design is usually dealt with through Building Regulations.

Purpose of the works

22. There is no question that the purpose of the works is closely associated with the building of the houses and not for some other purpose, and that the works are a necessary element in order to successfully implement the permission. The submitted information indicates that the ground stabilisation works would provide suitable ground for the foundations to be built from. The evidence is clear that the works are required as a result of the site-specific ground conditions. However, case law has established that purpose is not the sole determining test.

Whether part of the foundations or ground preparation works

¹⁰ Ground Stability Assessment by Stantec on behalf of Vertase FLI December 2019

¹¹ H Fraser Consulting Ltd Reference 30438R2 06/09/2021

23. The works would affect a significant area of the site and would involve works to the ground substantially deeper than would be expected with house foundations, as demonstrated by the IFCM drawing. The works would take approximately 35 weeks and require the importation of a large amount of material. The appeal submissions lead me to conclude that the scale and nature of the works is beyond those which would normally be expected in terms of foundations or ground preparation works in order to allow the houses to be built.
24. As a matter of fact and degree, and on the balance of probability, the appellant has not demonstrated that the works form part of the foundations or ground preparation that would normally be envisaged for the construction of dwellings.

Did the decision makers have knowledge or deemed knowledge of the need for ground stabilisation works at the time of their decisions?

25. The GSA explains that two ground investigations were carried out, during March 2019 and then August/September 2019. Both of the ground investigations were therefore undertaken after the Council's original refusal of the outline application in September 2016 and the appeal decision in August 2017.
26. The first ground investigation was carried out prior to the Reserve Matters approval of May 2019, but I have seen no evidence that the Council was aware of the results. The second ground investigation and a subsequent review of the investigations indicated that the site had a very high hazard rating for the occurrence of natural cavities. A comprehensive ground investigation was therefore needed to confirm the ground model and provide an indication of the dimensions of dissolution features identified across the site. This resulted in the GSA.
27. The OPMS relies on the geotechnical data collected from the GSA and has broadly disregarded the previous site investigations, due to the significantly greater number of sampling locations in the Stantec Report and the failure of previous reports to identify the presence of relaxed and disturbed ground associated with karstic dissolution of the chalk.
28. On the basis of the information before me, neither the local planning authority nor the Inspector had knowledge of the existence of natural cavities or dissolution features across the site at the time of their decisions on the outline application/appeal were made, nor therefore that ground stabilisation works would be required. Nor can it be said that there was deemed knowledge of these matters. The reserved matters approval did not appear to involve consideration of matters relating to the design of the foundations or ground investigation details, although the first ground investigation had been carried out at this time. It was only following a comprehensive ground investigation in December 2019 that the presence of relaxed and disturbed ground associated with the karstic dissolution of the chalk was identified.
29. I note that similar ground stabilisation works were required at a nearby development site at Highlands Park and the appellant argues that the Council should therefore have been aware of the likelihood of similar ground conditions on this site. However, in the absence of site-specific ground investigation works there is no indication that the decision maker was aware that similar ground conditions would be encountered at the appeal site. Moreover, the outline

application and appeal were determined prior to the submission to the Council of the information relating to the Desk Study and Ground Investigation for Highlands Park in September 2019.

30. It is not therefore the case, as in *Martin Grant Homes*, that the decision maker had knowledge of the need for the works, and it cannot therefore be said, on the balance of probability, that the decision maker must have intended that all necessary and reasonable works for the implementation of the permission were being incorporated within the grant of consent.
31. I recognise that unexpected circumstances are often uncovered in the course of implementing a planning permission. This does not mean that all eventualities are therefore anticipated when planning permission is granted.

Planning impacts

32. It therefore needs to be considered whether the works, due to their nature and scale, are likely to have planning impacts or consequences, that are different in character to those that would have been envisaged for the development at the time that the original outline permission was granted, or the reserved matters approval. In this context, I am concerned with planning consequences under the 1990 Act, not environmental consequences that may be covered by other controls or regimes. It is not a consideration of planning merits, but of whether the nature and scale of the work is such that it has a different character in planning terms.
33. The Technical Note on the Traffic Impact Assessment of the Grouting Exercise (the TIA) notes that the grouting will take place predominantly in advance of other construction activity on the site, with the exception of some of the ground works such as onsite roads and drainage. The grouting will generate the need for an average of 1,560 lorry movements, equating to 30 lorry movements a day for 20 weeks, with a worst-case scenario of 40 two-way lorry movements a day. Spread throughout the working day, this would equate to 2-4 two-way lorry movements an hour.
34. An additional 30 weekly lorry movements (5 a day) are anticipated for other construction activity which would take place whilst the end of the grouting is occurring. In the context of the 30 weekly movements associated with the other construction, the number of anticipated lorry movements generated by the proposal is significant enough to have potential planning consequences, whether in terms of the volume of traffic, or the effects of noise and vibration on local residents on the nearby transport network.
35. I note that the TIA indicates that in the context of existing lorry numbers on the adjacent A4155 the increase would be negligible, but it is nonetheless the case that these are planning consequences that indicate that the works are different in character to those anticipated at the time planning permission was granted.
36. The site is within a groundwater Source Protection Zone as there is water abstraction for public water supply at a water treatment works near the site. The site is underlain by a principal aquifer. Development of the site therefore has the potential to affect groundwater quality which could have implications for water abstraction. I understand from third party representations that the

site is close to areas at risk of flooding from the River Thames, although the site itself is not in a fluvial flood zone.

37. The HIA assessed the potential impacts on the groundwater abstractions for public water supply and the potential to increase flooding at the site. I acknowledge that the study concluded that the effects on groundwater abstractions and public water supply would be low due to the operational controls put in place during the grouting operations. Nonetheless, it indicates that the development is likely to have likely planning consequences and differs in character from the development that was permitted.
38. While I appreciate that the drainage strategy required by condition 11 has not yet been approved, it is not clear from the evidence whether, as a result of the ground stabilisation works, the finalised drainage strategy would unavoidably conflict with drawings approved at reserved matters and listed by condition 1, as suggested by the Council. In any event, it is apparent from the evidence that the ground stabilisation works would have implications for the design of the drainage strategy. This indicates that the information assessed at the time that the outline planning permission was granted is likely to have been based on erroneous assumptions. I cannot therefore conclude that the ground stabilisation works would not have planning consequences in relation to the drainage of the site.
39. While I accept that there will not always been certainty regarding matters such as ground conditions, drainage, land contamination etc at the time that an outline planning decision is made, and detailed consideration of these matters is usually dealt with through conditions, the information before me indicates that in this case there was no indication that ground conditions were such that a specialist solution would be required and that this could have planning consequences.
40. This is not a consideration of the planning merits of the proposal and is not therefore intended to be a comprehensive discussion regarding potential planning consequences. It demonstrates there are potential planning consequences from the development that differ from the permitted development to the extent that it has a different character. This case therefore differs from the High House appeal decision,¹² which relied on *Martin Grant Homes*. In paragraph 19 of the decision letter the Inspector notes that no planning consequence whatsoever would result from demolition and rebuilding of a dwelling, rather than partial rebuilding and extending.

Other considerations

41. The appellant also states that the Council accepted that the ground stabilisation works at Highlands Park were incidental or ancillary to the development. I have seen no evidence that an LDC was sought or granted for the works. Nor is it clear to me that the extent of the ground stabilisation works was comparable with this case. In any event, I have determined the appeal on the basis of the facts before me in terms of the scale and nature of the works and the planning permission.

¹² Appeal Decisions APP/C3430/X/17/3176413, APP/C3430/W/17/3177104

Conclusion

42. While it would be reasonable to expect that the construction of dwellings is likely to require some preparatory or enabling ground works, in this case the nature and scale of the ground works is such that they would be an engineering operation in their own right. It would have likely planning consequences that indicate that it would be of a different character to the permitted scheme. I am satisfied that the engineering works form a separate activity of substance as a result of the scale and nature of the works which were not envisaged at the time permission was granted. Therefore, as a matter of fact and degree and on the balance of probability, the works were not permitted by the outline planning permission and are development requiring planning permission.
43. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 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, pursuant to planning permission P16/S0970/O, 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.

N Thomas

INSPECTOR