

**Gladman Developments Limited**

# **UTILITY LAW SOLUTIONS**

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**Proposed Development of Land to the West of  
White Post Road, Banbury - Foul Drainage  
Analysis**

**June 2015**

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## **Proposed Development of Land to the West of White Post Road, Banbury - Foul Drainage Analysis**

### **A. Executive Summary**

Utility Law Solutions (ULS) specialises in water and sewerage law and its application in relation to new development sites. ULS has been appointed by Gladman Developments Ltd to provide advice in relation to foul drainage matters for its proposed development of land to the west of White Post Road, Banbury.

It is proposed that the site will be developed to comprise of up to 280 residential units. All foul flows from the development will be connected to the existing public sewerage network which is owned and operated by Thames Water (the Sewerage Undertaker).

Following an exchange of information with the Sewerage Undertaker in relation to the proposed development, the detail obtained has been analysed and incorporated into the proposed foul drainage strategy outlined in this report.

Notice of the intended planning application associated with this development has been given to the Sewerage Undertaker. ULS has set out the foul drainage strategy proposed for the development and a copy of the relevant correspondence is included at Appendix 1.

ULS has requested that the Sewerage Undertaker confirms whether the existing public foul sewerage network has available capacity to accommodate the foul flows from the proposed development. The Sewerage Undertaker has been commissioned to carry out an impact study to ascertain the level of available capacity in its system. This impact study will either confirm that the foul flows from the development can be accommodated, or may identify upgrade works required to the public sewerage network to cater for these new foul flows. If the impact study identifies that upgrade works are required, the Sewerage Undertaker will have sufficient time to carry out such works prior to foul flows from the development being discharged to the public sewer network. The results of the impact study will be known shortly.

Within this report the legislative regime pertaining to foul drainage has been set out. The purpose of this report is to avoid any uncertainties in relation to the foul drainage strategy for the development site, to satisfy the planning authority that foul drainage is not a constraint in terms of the development and to set out the responsibilities of sewerage undertakers generally. As detailed within this report, although considered unnecessary, any proposed foul drainage related planning condition must comply with the six tests set out in the National Planning Policy Framework (NPPF) and expanded on in the Planning Practice Guidance (PPG).

It is clear from the analysis set out below of both the legal and technical aspects relating to foul drainage, that there are appropriate options available to ensure this development is effectually drained and does not cause detriment to the existing public sewerage network. This report will evidence that there is sufficient time available i.e. at least two years, for the Sewerage Undertaker to take any action it considers necessary, in accordance with its statutory duties, to ensure that its public sewerage and sewage disposal system has the ability to receive the foul flows that would emanate from this development.

## **B. Drainage Strategy for the Development**

- B.1 There are public foul sewers available to connect to in White Post Road. This public sewer is located in public highway and can be accessed without crossing third party land. A new offsite sewer can be constructed in public highway to connect the onsite sewerage network to the public sewerage system. The developer will be required to serve a notice on the Sewerage Undertaker under section 106 of the Water Industry Act in relation to the connection to the public sewer and apply to the Highway Authority for a road opening licence under section 50 of the New Roads and Streetworks Act 1991 in relation to the offsite sewer to be laid in public highway.
- B.2 The Sewerage Undertaker has been commissioned to carry out an impact study to ascertain the level of available capacity in its system. This impact study will either confirm that the foul flows from the development can be accommodated, or may identify upgrade works required to the public sewerage network to cater for these new foul flows. If the impact study identifies that upgrade works are required, the Sewerage Undertaker will have sufficient time to carry out such works prior to foul flows from the development being discharged to the public sewer network. The results of the impact study will be known shortly.
- B.3 The potential sewer connection points are indicated in Appendix 2 which can be referenced against the Development Framework Plan that forms part of the planning application. The indicative extent of the development is shown edged red on the plan in Appendix 3.
- B.4 In order for foul water from the proposed development to be effectually drained, a new network of foul sewers (both onsite and offsite, as well as a pumping station if required) will be constructed. This network of new sewers will be connected to the existing public foul sewer network. All sewers will be constructed in accordance with the national industry guidance entitled "Sewers for Adoption" and will be offered for adoption to the Sewerage Undertaker under an agreement pursuant to Section 104 of the Water Industry Act 1991. This will ensure the long term maintenance of all new sewers and is the standard practice for new development.
- B.5 An onsite sewage pumping station will need to be constructed to receive the foul flows from this development. This will enable the foul flows to be directed to public sewers either to the south or east of the development as indicated in Appendix 2 via a rising main (a pipe under pressure). The most suitable point of connection is a matter that will be finalised at detailed design stage between the developer of the site and the Sewerage Undertaker, pursuant to the provisions of the Water Industry Act 1991.

B.6 Should outline planning permission for the proposed development be granted, Gladman Developments will be marketing and selling the site to a house-builder, who will then submit the necessary reserved matters application once detailed design for the development has been completed. The following future timescales are envisaged:

- Upon receipt of a valid planning approval, Gladman Developments will begin to market the site in late 2015.
- Sale of the site is likely to be completed by mid-2016.
- The developer will then complete detailed designs for the site and is likely to make a reserved matters application in the second half of 2016.
- Determination of reserved matters may take approximately 3-6 months, i.e. by early 2017.
- Initial on-site works could therefore commence by mid-2017 after allowing a few months for enabling works etc.
- Initial occupations (excluding show homes) may commence during late 2017 or early 2018 i.e. by the end of the first full year from when the development commences.
- Development will continue over a 6 to 7 year period with sales/occupations at around 40 dwellings per annum.
- Site completion estimated in 2023/2024

B.7 It is important to note with reference to the above timescales that foul flows from the development are not likely to enter the existing public sewerage network until late 2017 or early 2018. The process of confirming whether capacity is available in the public sewerage network is already underway and the results are likely to be known shortly. This allows more than two years for the Sewerage Undertaker to consider the development's potential impact on its sewerage network and sewage treatment works and if necessary, carry out any improvements which may be required to ensure the new foul flows can be accommodated in both the short and longer terms. Furthermore, given that development will increase on a slow, gradual basis, it is probable that any works found to be required would not need to be complete within the next 3 to 4 years. As the foul flows from this development will be pumped to the public sewerage network, the timing and level of foul flows from the pumping station can be precisely controlled. The ability to pump out foul flows at rates agreed with the Sewerage Undertaker and at off peak times if necessary could be utilised on a temporary basis if the need arises, until the Sewerage Undertaker makes any necessary changes to its network.

B.8 It is also worth bearing in mind that the need for extra homes is in greatest part not caused by inward migration, but by providing homes for people currently living as two households in one property. Inward migration only tends to account for between 30% and 40% of the need for extra homes. In assessing the impact of a development on the local foul sewerage system, the Sewerage Undertaker should not view this development as generating entirely



new additional foul flows, but rather a case of most of the foul flows being existing foul flows simply continuing to discharge within the same local network but from a different home.

- B.9 The above timescales afford sufficient time to the Sewerage Undertaker to improve its sewerage network and sewage treatment works (if required), to accommodate this development. Given the fact that the Sewerage Undertaker has a duty to carry out such actions under its statutory duties and that it is funded to do so, it would be inappropriate to prevent this development from proceeding on the grounds of sewerage or sewage treatment capacity or indeed to apply any restrictive planning condition which conflicts with the tests in para. 206 of the NPPF and explained in the PPG.
- B.10 The responsibilities for any upgrades to the sewerage and sewage treatment networks is a matter for the Sewerage Undertaker to manage in line with its statutory duties and analysis of the timescales for this development verifies that matters associated with the impact of foul drainage from this development on the public sewerage system do not need to be considered during this planning application.
- B.11 As set out above, the foul drainage strategy is to connect to existing local public sewers with improvement works (if required) that the Sewerage Undertaker has identified as part of its responsibility to manage the public sewerage network.

## **C. Water Industry Legislative Framework, Duties, Funding and the Planning Regime – ULS Analysis**

- C.1 ULS does not believe that foul drainage related planning conditions are necessary for new residential development. The actual impact of foul and wastewater drainage from a proposed development on the environment must always be evaluated with due regard to the statutory provisions set out in the Water Industry Act 1991 (WIA1991) and the duties of sewerage undertakers contained therein. Given that the Sewerage Undertaker will have analysed whether the public sewerage network has available capacity to accommodate foul flows from the development and/or determined what upgrading works may be required to its system two years prior to any discharge from the site, a foul drainage planning condition is clearly not required in light of the statutory regime contained within water industry primary legislation that governs such matters.
- C.2 A summary of the relevant sections of the WIA1991 is set out in Appendix 4 together with the full wording of those sections.
- C.3 The proposed development must be considered in conjunction with the six tests set out in the National Planning Policy Framework (NPPF) and expanded on in the Planning Practice Guidance (PPG). In order for a foul drainage condition to be justified in terms of the guidance in the NPPF and PPG, the condition would have to be shown to be necessary and reasonable.
- C.4 ULS has set out its detailed analysis of the interaction between the water industry statutory framework and the planning regime in Appendix 5.
- C.5 When considering the drainage related aspects of a planning application, the correct approach in law is as follows:
- To have due regard to the rights which the developer would have to connect the development to the public sewerage system and what impact to the environment that would have but also taking into account the general duty imposed on sewerage undertakers under section 94 together with the charging provisions of the WIA1991.
  - To carefully consider whether those impacts would be such as to justify refusing permission, and if so whether they could be mitigated by a planning condition.
  - To carefully consider whether any such condition would meet the policy tests in the NPPF and PPG.
- C.6 Conditions relating to sewerage and sewage treatment must be considered and justified against the tests set out in the NPPF and the PPG. In particular,

given the rights and duties in the Water Industry Act 1991, careful consideration is required as to the time-scales involved in implementing a permission for residential development. It is reasonable to expect the Sewerage Undertaker to make provision for the necessary infrastructure so as to avoid adverse effects, and to fund this through the normal means of charges. On the basis:-

- that the Sewerage Undertaker will shortly be aware of whether the foul flows from this development can be accommodated in the public sewerage system; and
- given the timescales for the ultimate discharge of foul flows from this development to the public sewerage network, as explained in more detail in Appendix 5;

a foul drainage condition is unnecessary and would therefore fail the test of reasonableness laid out in the NPPF.

C.7 As indicated above, sewerage undertakers are funded to meet their obligations under the provisions of the WIA1991. On this specific development, the addition of 280 new customer households will provide additional annual income to the Sewerage Undertaker. The current average sewerage charge in the Sewerage Undertaker's area is £171.00 per property giving the Sewerage Undertaker an annual income of £47,880.00. Each new dwelling constructed on this development will also be subject to a sewerage infrastructure charge (current rate £353.88 per property). This will generate a further one off payment to the Sewerage Undertaker of £99,086.40. A full explanation of how sewerage undertakers are funded is included in Appendix 5.

## **D. Summary**

D.1 It is clear from the above analysis of both the legal and technical aspects relating to foul drainage, that there are appropriate options available to ensure this development is effectually drained and does not cause detriment to the existing public sewerage network.

D.2 In summary:

- The Sewerage Undertaker is currently ascertaining whether there is available capacity in the public sewerage network to accommodate foul flows from the proposed development.
- The developer has a right to connect to the public sewerage network at a point of its choosing and the Sewerage Undertaker has a duty to carry out any works necessary to accommodate any resulting foul flows (s106 and s94 of the WIA1991).
- If the Sewerage Undertaker requires construction of foul drainage works for this site to be carried out in an alternative manner or connect at a different location to that proposed by the developer, it can compel the developer (through s112 of the WIA1991) to carry out the additional works to achieve this and reimburse to the developer any costs over and above those that would have been incurred.
- The Sewerage Undertaker has sufficient time to fully assess the impact of this development on its sewerage network and sewage treatment works and to plan and implement any improvement works deemed necessary prior to foul flows from the development being introduced into the public sewerage system.
- Foul flows from new developments increase gradually over an extended period of time. This affords more time to the Sewerage Undertaker to ensure that public sewers can be upgraded to accommodate a level of new foul flows if necessary.
- Foul drainage matters relating to this development can be satisfactorily dealt with without any requirement for a planning condition which would conflict with the tests in para. 206 of the NPPF and explained in the PPG.

D.3 We have highlighted the separate legislative regimes that operate within the planning system and the water industry which demonstrate that it would be unreasonable to refuse planning permission for this development on sewerage capacity or sewage treatment grounds and that a foul drainage condition is not required in this instance. Matters pertaining to foul drainage and sewage treatment for this development are fully addressed by water industry legislation.

- D.4 Many sewerage undertakers have indicated to ULS that until a sewerage undertaker has certainty that sufficient development will take place in a particular area, it is unlikely that any investment in sewerage or sewage treatment will be allocated. It would therefore be illogical to refuse planning permission on the grounds that no sewerage or sewage treatment improvement works are planned for the systems to which this development will discharge foul flows. If this position were adopted generally then any new development in areas where water companies perceived that their systems were under pressure would be refused. Only granting planning permission for developments in this area without planning conditions will ensure that the Sewerage Undertaker fully considers the current drainage network and systems in line with its statutory duties. This will provide a benefit not only to new development, but also the existing settlement.
- D.5 The grant of planning permission for the development will give the Sewerage Undertaker sufficient certainty that it will go ahead and its planning to ensure that its systems can meet the demands of this particular development can continue.

**Contact Details**

Philip R. Day  
07968 435648  
01789 730297  
[philip.day@utilitylawsolutions.co.uk](mailto:philip.day@utilitylawsolutions.co.uk)

**Contact Details**

Alex M. Day  
07824 601346  
01949 836043  
[alex.day@utilitylawsolutions.co.uk](mailto:alex.day@utilitylawsolutions.co.uk)

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## Utility Law Solutions – Company Overview

ULS is owned and operated by Philip Day and Alex Day and was incorporated in 2007. Since its inception, ULS has provided advice and assistance to developers, landowners and other bodies operating in the house building sector on issues relating to foul drainage, sewage treatment and associated infrastructure matters.

Prior to the formation of ULS Philip Day and Alex Day were both employed in the Water & Sewerage Industry by Severn Trent Water, being one of the largest sewerage undertakers in the UK. Philip and Alex therefore have first-hand knowledge of the operation of sewerage undertakers and how they interact with developers and others in the house building industry.

Before leaving Severn Trent Water to set up Utility Law Solutions, Philip was their Principal Legal Advisor for Asset Management matters. In this role Philip's responsibilities were wide ranging and included the provision of legal advice and support to the business in relation to all asset management issues arising out of the company activities in sewage treatment, water supply and networks (water main and sewerage systems). During his time with Severn Trent Water, Philip was *inter alia* directly responsible for all legal aspects relating to:–

- Advice on the effects of the Water Industry Act 1991 and related legislation
- Obligations of sewerage undertakers in relation to the section 94 duty
- Formulation of policies and procedures in relation to the connection of infrastructure to new developments including resolution of development related problems/disputes
- Sustainable Drainage Systems (SuDS) - Member of the National SuDS Working Group providing legal support which culminated in the Interim Code of Practice for Sustainable Drainage Systems
- Sewers for Adoption – Provision of legal support for Sewers for Adoption 5 and 6, including creating a new national agreement
- Development through Water UK involvement, of water company positions in relation to Private Sewers legislation, New Roads and Street Works and Traffic Management Acts, Environmental Liability Directive, Section 101A (rural sewers) applications and processes and Environmental Information Regulations

Alex was employed by Severn Trent Water in its Developer Services and New Connections department with duties including assessing and communicating the impact of new developments on existing sewerage networks and evaluating sewer designs proposed by developers in accordance with industry standards. Alex worked in close collaboration with the Asset Protection and the Legal departments in Severn Trent providing an important link for his own team to ensure that all activities relating to new development complied with both statutory provisions and protected the technical requirements of the company. Alex also spent 4 years prior to joining ULS working as a consultant to developers providing advice on matters including the impact of proposed developments on sewerage networks and acting as an agent in communicating with sewerage undertakers.

[www.utilitylawsolutions.co.uk](http://www.utilitylawsolutions.co.uk)

Utility Law Solutions Ltd – Registered in England No. 6072562  
Registered Office: 12 Payton Street, Stratford upon Avon, Warwickshire, CV37 6UA

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# Appendix 1

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**From:** Alex Day [mailto:[alex.day@utilitylawsolutions.co.uk](mailto:alex.day@utilitylawsolutions.co.uk)]  
**Sent:** 10 June 2015 09:09  
**To:** 'Impact Studies'  
**Cc:** 'Soumya Kaushik'; Dagmara.Janicka@thameswater.co.uk; 'Luke Byrne'  
**Subject:** RE: SMG1809 Land off Salt Road, Banbury

Hi Pugazh,

Further to our exchange of emails below, I have just been informed that the number of units on this development has now been increased to 280 residential properties.

Hopefully this will not cause you any issues, apologies for the last minute change.

Regards

Alex Day  
Director  
Utility Law Solutions Ltd.

07824 601 346  
01949 836 043  
[alex.day@utilitylawsolutions.co.uk](mailto:alex.day@utilitylawsolutions.co.uk)  
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Utility Law Solutions Ltd  
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Registered in England No. 6072562

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**From:** Alex Day [mailto:[alex.day@utilitylawsolutions.co.uk](mailto:alex.day@utilitylawsolutions.co.uk)]  
**Sent:** 11 May 2015 16:53  
**To:** 'Impact Studies'  
**Cc:** 'Soumya Kaushik ([soumya.kaushik@thameswater.co.uk](mailto:soumya.kaushik@thameswater.co.uk))';  
'Dagmara.Janicka@thameswater.co.uk'; 'Luke Byrne ([Luke.Byrne@thameswater.co.uk](mailto:Luke.Byrne@thameswater.co.uk))'  
**Subject:** RE: SMG1809 Land off Salt Road, Banbury

Hi Pugazh,

Details for the site are as follows:

1. Development proposals have now been reduced to up to 250 residential properties.
2. There is a low point in the centre of the site which indicates a pumped connection will be required to achieve a connection to the public sewer in White Post Road in the area of manholes 0304/0201. Topo survey is attached.

Hope this helps and I look forward to receiving the report in due course,

Regards

Alex Day  
Director  
Utility Law Solutions Ltd.

07824 601 346  
01949 836 043  
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**From:** Impact Studies [[mailto:Impact\\_Studies@mwhglobal.com](mailto:Impact_Studies@mwhglobal.com)]  
**Sent:** 11 May 2015 06:40  
**To:** [Alex.day@utilitylawsolutions.co.uk](mailto:Alex.day@utilitylawsolutions.co.uk)  
**Cc:** 'Soumya Kaushik ([soumya.kaushik@thameswater.co.uk](mailto:soumya.kaushik@thameswater.co.uk))';  
'Dagmara.Janicka@thameswater.co.uk'; 'Luke Byrne ([Luke.Byrne@thameswater.co.uk](mailto:Luke.Byrne@thameswater.co.uk))'  
**Subject:** SMG1809 Land off Salt Road, Banbury

Morning Alex,

We are about to begin running the development model for Land off Salt Road, Banbury site impact study, and I'd like to confirm the development details with you.

The scope and estimate states;

- The proposed development will consist of 300 residential properties.
- A proposed connection point has not been identified by the Developer.

We would be grateful if you could also confirm whether you plan to connect development flows via gravity or a new pumping station, and the preferred connection manhole.

Kind regards,  
Pugazh



MWH Impact Studies Team

MWH Global  
Buckingham Court  
Kingsmead Business Park  
Frederick Place  
London Road  
High Wycombe HP11 1JU  
United Kingdom

[www.mwhglobal.com](http://www.mwhglobal.com)

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Tyrone Parkinson – 01494 557692  
Fiona Macdonald – 01494 557689  
Graham Moralee – 01494 557695  
John Potts – 01925 845102

---

8<sup>th</sup> April 2015

Thames Water Utilities Ltd.  
Developer Services  
3<sup>rd</sup> Floor West  
Clearwater Court  
Vastern Road  
Reading  
RG1 8DB

Dear Luke

**Re: Re: Pre-development enquiry for Land off Salt Way, Banbury, Cherwell, OX15 4BN (TW ref 50046060)**

I write further to your letter dated 20<sup>th</sup> March 2015 in relation to the above site confirming the cost of an Impact Study for the above development.

I enclose a cheque for £6,394.08 to enable the impact study to be carried out.

Please note that the planning application will be submitted in the very near future and is part of a larger allocation in the local plan for developments in Banbury.

Please could you forward me confirmation of the above together with a VAT Receipt at your earliest convenience.

I look forward to hearing from you in due course, if you require any further information, please do not hesitate to contact me.

Yours sincerely,

**Alex Day**  
**Director**  
**Utility Law Solutions Limited**



F.A.O Mr Alex Day

Utility Law Solutions

Thames Water Utilities Ltd  
Developer Services Waste  
Clearwater Court (Third Floor West)  
Vasern Road, Reading  
Berks RG1 8DB

Your ref  
Our ref 50046060  
Name Luke Byrne  
Phone 0845 850 2777  
E-Mail Developer.services@thameswater.co.uk

20 March, 2015

Dear Sirs,

**Proposed development at Land off Salt Way, Banbury, Cherwell, OX15 4BN**

Further to your letter dated 16th February 2015, requesting scoping of an impact study relating to the foul sewerage network serving the above site, I have now received the estimated cost for Thames Water to administer the study.

The cost of the study will be £5,328.40 plus VAT.

This will include for the following:-

- Data collection
- Site visit and manhole survey
- Building computer model
- Verifying model using monitoring results
- Computer simulations and hydraulic capacity calculations
- Identification of options
- Report with recommendations

It is anticipated that the time for completion of the initial report, from receipt of the fee, will be 10 weeks.

Should you wish to take up this offer, please confirm in writing and submit the fee to this office.

Yours faithfully

Luke Byrne  
Developer Services Engineer

Thames Water Utilities Ltd  
Developer Services Waste  
Clearwater Court (3rd Floor West)  
Vasern Road, Reading  
Berks RG1 8DB  
T 01183738778  
I www.thames-water.com

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Clearwater Court, Vasern Road  
Reading, Berks. RG1 8DB

**Tel: 01949 836 043**  
**Mobile: 07824 601 346**

**Email: alex.day@utilitylawsolutions.co.uk**

Luke Byrne  
Developer Services Engineer  
Thames Water Utilities Ltd.  
Developer Services  
Clearwater Court  
Vastern Road  
Reading  
RG1 8DB

16<sup>th</sup> February 2015

Dear Luke

**Re: Pre-development enquiry for Land off Salt Way, Banbury, Cherwell, OX15 4BN  
(TW ref 50046060)**

I write further to your email dated 13<sup>th</sup> February 2015 in relation to the above site, a copy of which is enclosed for ease of reference. The planning application for the proposed development is due to be submitted in the near future and we have been instructed by Gladman Developments to make further enquiries with Thames Water in relation to foul drainage capacity.

I enclose a cheque for £480.00 (£400 + VAT) to enable you to prepare the scope and impact study quote referred to in your email.

I would be grateful if you could include in your response as much detail as you are able in relation to the nature and severity of capacity issues which have lead you to the opinion that an impact study on the public sewer network is required, so that I can provide a meaningful update to my client in relation to the progression of this matter.

I look forward to hearing from you in the near future, if you require any further information, please do not hesitate to contact me.

Yours sincerely,

**Alex Day**  
**Director**  
**Utility Law Solutions Limited**



**Mr Alex Day**

Utility Law Solutions

Developer Services

Your ref  
Our ref 50046060  
Name Luke Byrne  
Phone 08458502777  
E-Mail [developer.services@thameswater.co.uk](mailto:developer.services@thameswater.co.uk)

13 February 2015

**Re: Salt Way, Banbury, Cherwell, OX15 4BN**

Dear Alex,

I write in relation to the above site and further to your Pre-Development Enquiry application regarding the proposed development here.

Further to receiving your application we have consulted with our Asset Planners for the area and they have made comment regarding the capacity of the public foul water sewers adjacent to the proposed site to accommodate the additional 300 residential units.

They have concerns regarding the foul sewerage network capacity in this area and its ability to support the demand anticipated from this development. It will therefore be necessary for us to undertake a detailed investigation into the impact of the development by means of a developer funded impact study. This will determine whether capacity does exist in the foul network or what upgrades to the existing foul network are required before the site can be connected to it.

Firstly, we would require a cheque made payable to Thames Water Utilities Ltd for £400 + VAT which our Modelling Group need in order to scope what is required as part of the impact study. This will enable them to create a quote for the impact study itself which I will then forward to you.

If you wish to proceed with this scoping exercise, please make a payment to this office. If you have any further queries then please do not hesitate to call me on the above number.

Yours sincerely,

Luke Byrne  
Development Engineer

Thames Water Utilities Ltd,  
Clearwater Court, Vastern  
Road, Reading RG1 8BD  
T 0118 3 738744  
I [www.thames-water.com](http://www.thames-water.com)

Registered in England and Wales  
No. 2366661, Registered office  
Clearwater Court, Vastern Road  
Reading, Berks. RG1 8DB



**From:** [DEVELOPER.SERVICES@THAMESWATER.CO.UK](mailto:DEVELOPER.SERVICES@THAMESWATER.CO.UK)  
[mailto:[DEVELOPER.SERVICES@THAMESWATER.CO.UK](mailto:DEVELOPER.SERVICES@THAMESWATER.CO.UK)]

**Sent:** 29 January 2015 10:30

**To:** [alex.day@utilitylawsolutions.co.uk](mailto:alex.day@utilitylawsolutions.co.uk)

**Subject:** IRef:1012507334 Courtesy 50046060 Salt Way Banbury Oxon OX15 4BN

Thames Water  
Developer Services  
3rd Floor West  
Clearwater Court  
Vastern Road  
Reading  
RG1 8DB

Telephone - 0800 009 3921

Email - [developer.services@thameswater.co.uk](mailto:developer.services@thameswater.co.uk)

Our Ref : 50046060

**RE: Salt Way Banbury Oxon OX15 4BN**

Dear Mr Day

Thank you for your application for a pre-development enquiry at the above address. This has been passed to our technical team for assessment and they will contact you within 21 working days.

Should you have any further queries regarding your application, please contact us on 0800 009 3921 (Our lines are open from 8am to 5pm, Monday to Friday and are closed at weekends and bank holidays), quoting reference number 50046060.

Yours Sincerely

Business Services Team

Developer Services

## Application for pre-development enquiry

**Help and support**

If you would like to contact us about this application, please call our helpdesk on 0845 850 2777. Lines are open weekdays from 8am to 5pm.

| Payment details  |                 |
|------------------|-----------------|
| Order code       | 150127153916919 |
| Payment amount £ | 477.6           |
| RBS transID      | 3568872072      |

| Applicant details |                       |
|-------------------|-----------------------|
| Title             | Mr                    |
| First name        | Alex                  |
| Last name         | Day                   |
| Company name      | Utility Law Solutions |

| Applicant contact details  |                                    |
|----------------------------|------------------------------------|
| Contact number             | 01949836043                        |
| Alternative contact number | 07824601346                        |
| Email address              | alex.day@utilitylawsolutions.co.uk |

| Applicant address details |  |
|---------------------------|--|
| Address                   |  |
| Town                      |  |
| Postcode                  |  |

| Nominated contact details |      |
|---------------------------|------|
| Title                     | Mr   |
| First name                | Alex |
| Last name                 | Day  |

|                |                       |
|----------------|-----------------------|
| Company name   | Utility Law Solutions |
| Contact number | 01949836043           |
| Address        |                       |
| Town           |                       |
| PostCode       |                       |

| Development site details               |                         |
|--|-------------------------|
| Address                                | Salt Way                |
| Town                                   | Banbury                 |
| Local authority                        | Cherwell DC             |
| Vat development classification         | New build house or flat |
| What was the site previously used for? | Greenfield/Agricultural |

| Planning status of site                            |            |
|--|------------|
| Is the site identified on the local plan?          | Yes        |
| Reference  | Banbury 17 |
| Does the site have Outline Planning Permission?    | No         |
| Does the site have Full Planning Permission?       | No         |
| Does the site have Building Regulation Permission? | No         |

| Proposed development and flows                      |   |
|---|---|
| MH reference for foul water                         | 0304 in White Post Road                                 |
| Size of proposed development (No of units/hectares) | 300 residential units                                   |
| Proposed forward discharge rate                     | 6.9 ls (Based on SFA pumped flows ie half design flows) |
| Proposed Sw discharge rate                          | 0   |

| Does the site have existing sewerage connections? |
|---|
|---|

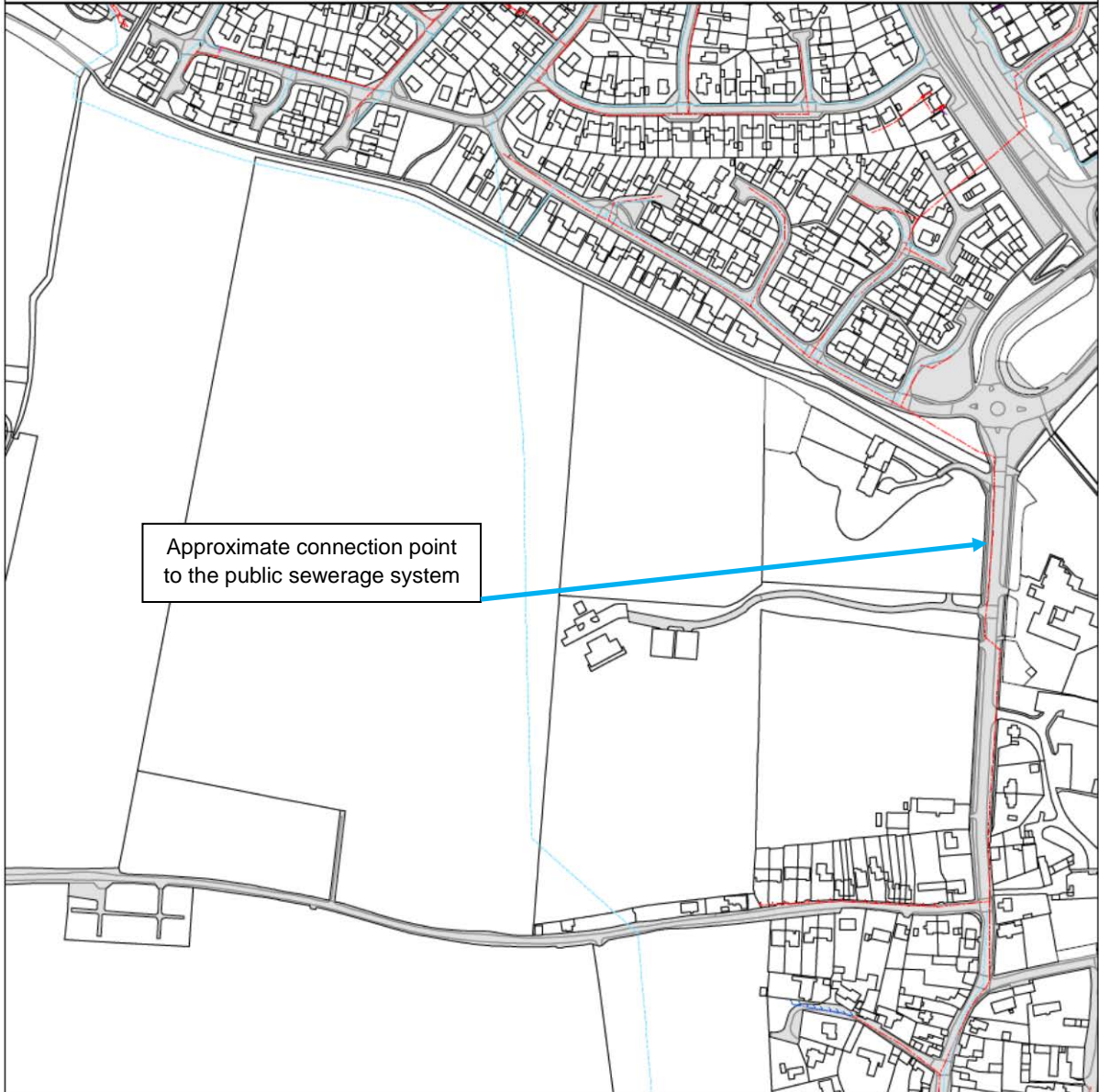
|               |    |
|---------------|----|
| Foul water    | No |
| Surface water | No |

## Appendix 2

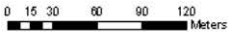
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Based on the Ordnance Survey Map with the sanction of the Controller of HM Stationary Office License Number 10019345

### CDWS/CDWS Standard/2013\_2508117



Approximate connection point to the public sewerage system



The position of the apparatus shown on this plan is given without obligation and warranty, and the accuracy cannot be guaranteed. Service pipes are not shown but their presence should be anticipated. No liability of any kind whatsoever is accepted by Thames Water for any error or omission. The actual position of mains and services must be verified before any works are undertaken. Crown copyright Reserved

|   |                         |
|---|-------------------------|
| <p><b>Scale:</b> 1:2863</p> <p><b>Width:</b> 800m</p> <p><b>Printed By:</b> mabdul</p> <p><b>Print Date:</b> 26/06/2013</p> <p><b>Map Centre:</b> 445715,238318</p> <p><b>Grid Reference:</b> SP 4538SE</p> | <p><b>Comments:</b></p> |
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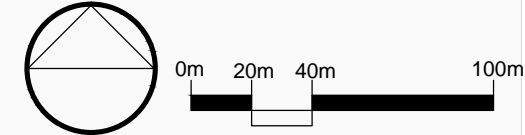
## Appendix 3

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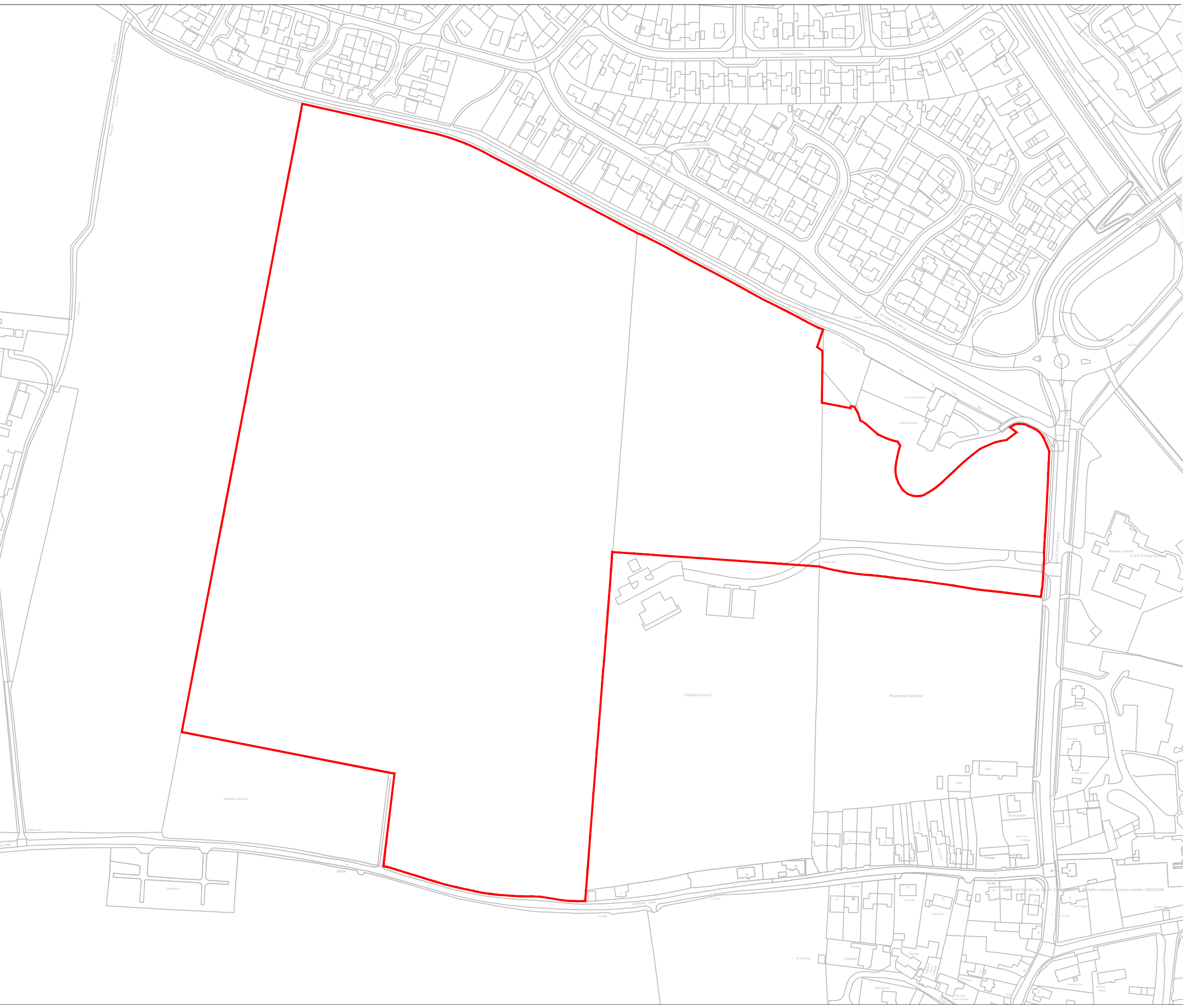
NOTES:  
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 Licence 100045345

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No Dimensions to be scaled from this drawing.



KEY:  
 Site Boundary



| REV       | DATE | NOTE | DRAWN | CHK'D |
|-----------|------|------|-------|-------|
| REVISIONS |      |      |       |       |

**aspect landscape planning**

TITLE  
**White Post Road, Banbury  
 Location Plan**

CLIENT  
**Gladman Developments Ltd**

|                               |                  |              |
|-------------------------------|------------------|--------------|
| SCALE<br>1:2500@A3            | DATE<br>JUN 2015 | DRAWN<br>SLB |
| DRAWING NUMBER<br>5713/ ASP01 |                  | REVISION     |

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# Appendix 4

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## **Water Industry Legislation**

### **Summary**

The Water Industry Act 1991 (WIA 1991) provides a full legislative framework which incorporates provisions to ensure that new developments can be effectually drained through the adoption of the new onsite sewers and connection to the existing public sewerage network or, in the case of surface water, discharge into an available watercourse. The WIA1991 also contains sufficient safeguards to ensure that foul flows resulting from new development do not cause detriment to the existing public sewerage network. A duty is imposed on sewerage undertakers by the WIA1991 to take action to carry out any necessary works to accommodate new foul flows into their networks. Where it is perceived that new flows may cause detriment to existing public sewer networks, in addition to its duty to improve/upgrade, a sewerage undertaker also has the ability to compel a developer to connect at a point of adequacy on its system or otherwise alter the proposed drainage arrangements.

It should also be noted that the Water Industry Act provides for the water industry regulator to arbitrate on disputes between developers and sewerage undertakers on sewer connections and the provision of sewerage infrastructure in the event that such a dispute cannot be resolved between the parties. Involving the planning system in such matters is both unnecessary and has the potential to cause conflicts between the two legislative regimes.

The relevant sections of the WIA1991 which confirm the above statements are set out in full below but for convenience are summarised as follows:

### **Section 104 – Sewer Adoption Agreements**

Section 104 of the WIA 1991 provides for developers to enter into a section 104 sewer adoption agreements in conjunction with exercising rights to connect to the public sewerage network under section 106(1) WIA 1991.

### **Section 106 – Right to Communicate with Public Sewers.**

Developers enjoy a statutory right to connect new sewers to existing public sewers under section 106 (1) of the WIA1991 and sewerage undertakers do not have the ability to refuse a connection on the grounds of capacity in the local sewerage network and/or sewage treatment works.

Section 107 entitles the sewerage undertaker to give notice within 14 days of receipt of a notice under section 106(3) that the undertaker intends to make the communication himself. In that event the developer has to pay the reasonable cost of the work.

The Supreme Court in its recent judgment against a sewerage undertaker upheld this long-standing automatic right of connection to available public sewers (Barratt Homes Limited (Respondents) v Dwr Cymru Cyfyngedig (Welsh Water) (Appellants) – paragraphs 23-26, 41, 55).

The following extract from the judgment highlights some of the issues that were considered (with the key parts underlined):

*41. The real problem that is demonstrated by the facts of this case arises out of the “absolute right” conferred by section 106 of the 1991 Act on the owner or occupier of premises to connect those premises to a public sewer without any requirement to give more than 21 days notice. While this might create no problem in the case of an individual dwelling house, it is manifestly unsatisfactory in relation to a development that may, as in the present case, add 25% or more to the load on the public sewer. The public sewer may well not have surplus capacity capable of accommodating the increased load without the risk of flooding unless the undertaker has received sufficient advance notice of the increase and has been able to take the necessary measures to increase its capacity.*

*57. As OFWAT has pointed out, although the 1991 Act affords no such right, there is a case for deferring the right to connect to a public sewer in order to give a sewerage undertaker a reasonable opportunity to make sure that the public sewer will be able to accommodate the increased loading that the connection will bring. The only way of achieving such a deferral would appear to be through the planning process. Some difficult issues of principle arise however:*

*□Is it reasonable to expect the sewerage undertaker to upgrade a public sewerage system to accommodate linkage with a proposed development regardless of the expenditure that this will involve?*

*□How long is it reasonable to allow a sewerage undertaker to upgrade the public sewerage system?*

*□Is it reasonable to allow the sewerage undertaker to delay planned upgrading of a public sewer in the hope or expectation that this will put pressure on the developer himself to fund the upgrading?*

A 21 day notice is only exercisable when the sewer that is required to connect foul flows from a new development has actually been constructed (as confirmed by Ofwat in a formal Determination). The development timescales set out in Section B above demonstrate that in reality sewerage undertakers always have significant periods of notice before new foul flows need to be accommodated in the public system.

## **Section 94 – A Sewerage Undertaker’s General Duty to Provide a Sewerage and Sewage Disposal System**

Under section 94 (1) of the WIA1991, sewerage undertakers have a duty to provide, improve, extend and make provision for the emptying of their sewerage systems by effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers that comprise the public sewerage system. The provisions of this section of the WIA1991 relate not only to long term capital works to improve



the sewerage system generally, but also place a duty on the sewerage undertaker to react to changes in the level of discharges into its networks.

Section 94(1) places a duty on sewerage undertakers to plan and implement any works they feel are necessary to ensure their network of sewers (and sewage treatment facilities) continue to operate satisfactorily once they have received notification that a developer intends to exercise the right to connect under section 106(1). In reality, a sewerage undertaker has sufficient certainty (and time as a result of the advance notice they receive) that a development will be proceeding on the grant of planning permission (outline or full) and should consider any necessary actions to comply with its section 94 duty at that stage. Conversely, until a sewerage undertaker has certainty that sufficient development will take place in a particular area, it is unlikely that any investment in sewerage or sewage treatment will be allocated. It is therefore illogical to refuse to grant planning permission for developments on the grounds that no improvement works are planned for a particular area.

### **Section 112 – An Alternative to Works Under the Section 94 Duty**

Whilst all developers and landowners have an absolute right to connect to the public sewer nearest to their premises, in some circumstances it may be the case that the sewerage undertaker requires drainage systems to be constructed in a manner which better protects the existing public sewerage and/or sewage treatment systems. It may for example be beneficial for a sewerage undertaker to require that a developer connects at an alternative location which constitutes a point of adequacy or provide onsite attenuation to ensure that new flows are only discharged at a specific rate or during certain times until any deficiencies in its systems have been resolved. Given the rights and duties under section 106 and 94 of the WIA1991, it would not however be appropriate to expect a developer to pay for any additional works. Section 112 of the WIA1991 provides a mechanism for sewerage undertakers to compel a developer to carry out alternative works (s112 (1)), but with the difference of cost being met by the sewerage undertaker (s112 (6)).

Clearly if compelling alternative works would be more cost effective for a sewerage undertaker than implementing sewer or sewage treatment improvement works under its section 94 duty or would allow extra time to carry out such works, this option is both viable and useful to ensure that a development can be effectually drained.

**Section 104 - Agreements to adopt sewer, drain or sewage disposal works, at future date**

- (1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—
- (a) any person constructing or proposing to construct -
    - (i) any sewer;
    - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
    - (iii) any sewage disposal works; or
  - (b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.

- (2) A person mentioned in paragraph (a) or (b) of subsection (1) above may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.

## **Section 106 – Right to Communicate with Public Sewers**

(1) Subject to the provisions of this section -

- (a) the owner or occupier of any premises, or
- (b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.

(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146 below -

- (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
- (b) for the purposes of paragraph (a) above

- (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under section 102 above or under an agreement made under section 104 above; and

- (ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.

(2) Subject to the provisions of Chapter III of this Part, nothing in subsection (1) above shall entitle any person -

- (a) to discharge directly or indirectly into any public sewer -

- (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or

- (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment; or

- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly -

- (i) foul water into a sewer provided for surface water; or

- (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or

- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.

(4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3) above, the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer –

- (a) does not satisfy the standards reasonably required by the undertaker; or
- (b) is such that the making of the communication would be prejudicial to the undertaker's sewerage system.

(5) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under subsection (3) above relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

(5A) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under section 102 above.

(6) Any question arising under subsections (3) to (5A) above between a sewerage undertaker and a person proposing to make a communication as to -

- (a) the reasonableness of the undertaker's refusal to permit a communication to be made; or
- (b) as to the reasonableness of any requirement under subsection (5) [or (5A) above, may, on the application of that person, be determined by the Authority under section 30A above (and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above).

(7) .....

(8) Where a person proposes under this section to make a communication between a drain or sewer and such a public sewer in Greater London as is used for the general reception of sewage from other public sewers and is not substantially used for the reception of sewage from private sewers and drains -

- (a) the grounds on which a sewerage undertaker may refuse to permit the communication shall be such grounds as the undertaker thinks fit; and
- (b) no application to the Authority may be made under subsection (6) above in respect of any refusal under this subsection.

(9) In this section "factory" has the same meaning as in the Factories Act 1961.

## **Section 94 - General Duty to Provide Sewerage System**

(1) It shall be the duty of every sewerage undertaker -

(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard -

(a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and

(b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above -

(a) by the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Authority.

(4) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 95 below and shall not be in any way qualified by any such provision.

(5) In this section "trade effluent" has the same meaning as in Chapter III of this Part; and, accordingly, section 139 below shall have effect for the purposes of this section as it has effect for the purposes of Chapter 3 of this Part.

## **Section 112 – Requirement that Proposed Drain or Sewer be Constructed so as to Form Part of General System.**

(1) Where -

(a) a person proposes to construct a drain or sewer; and

(b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide, the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.

(2) If any person on whom requirements are imposed under this section by a sewerage undertaker is aggrieved by the requirements, he may within twenty-eight days appeal to the Authority.

(3) On an appeal under subsection (2) above with respect to any requirements, the Authority may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this section to comply with those requirements.

(5) The duty of any person by virtue of subsection (4) above to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this section shall -

(a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and

(b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.

(7) Nothing in this section shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertakers or dock undertakers in or on land which -

(a) belongs to them; and

(b) is held or used by them for the purposes of their undertaking.

# Appendix 5

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## **Water Industry Legislative Framework, Duties, Funding and the Planning Regime – ULS Analysis**

### **The Planning Tests**

The following statements are pertinent and should be applied by the local planning authority when considering proposed development in conjunction with the six tests set out in the National Planning Policy Framework (NPPF) and expanded on in the Planning Practice Guidance (PPG):-

1. The actual impact of foul and wastewater drainage from a proposed development on the environment must always be evaluated with due regard to statutory provisions set out in the Water Industry Act 1991 and the duties of sewerage undertakers contained therein.
2. In considering any foul and wastewater drainage matters, the planning authority must take into consideration the fact that the developer has an absolute right to connect to the public sewerage system under section 106 of the Water Industry Act 1991 (the WIA1991), whether or not this would give rise to adverse effects e.g. increased flooding or environmental harm due to a restricted capacity in the sewerage and sewage treatment system.
3. The planning authority must also consider the following matters:
  - a) Section 94 of the WIA1991 imposes a continuing duty on all sewerage undertakers to provide, maintain and where necessary improve its systems for collecting and treating foul and wastewater drainage so as to effectually drain its area and effectually deal with the contents of its sewers;
  - b) a sewerage undertaker is provided with the means of funding the cost of fulfilling the above duty within the WIA1991 through sewerage and infrastructure charges; and
  - c) the WIA1991 clearly sets out that the costs of meeting the above duty are required to be borne by the sewerage undertaker, not the developer, save in one limited case where a new sewer is requisitioned by the developer (normally in cases where access to a public sewer is across intervening third party land) and where the charges for its use would not cover the cost of borrowing to provide it.
4. ULS does not believe that foul drainage related planning conditions are necessary for new residential development. In order for any such condition to be justified in terms of the guidance in the NPPF and PPG, the condition would also have to be shown to be necessary and reasonable. It would not be reasonable if it imposes an unjustifiable burden on the developer. Nor would it

be reasonable if the condition had the practical effect of forcing the developer to fund any inadequacies in sewerage or sewage treatment because the sewerage undertaker was not prepared to fulfil its statutory obligations in a timely manner i.e. within the reasonable timescales indicated within this report which estimate when the development would start to produce meaningful foul flows. In theory a negative “Grampian” style condition could as a matter of law be imposed to restrain the occupation of development until satisfactory arrangements are made to deal with the sewage and wastewater generated. However, in practice it is clear that such a condition would fail when set against the tests in para. 206 of the NPPF and explained in the PPG on the basis that there is normally sufficient time for the sewerage undertaker to fulfil its statutory duties as set out below or there is manifestly negligible impact on the sewerage and sewage treatment system.

5. When considered properly in the light of the structure and intentions of the WIA1991, current deficiencies in sewerage and sewage treatment provision would not in themselves justify refusal of permission or a Grampian condition. A planning authority must take into account the reasonable timescale when foul flows from the development would start to discharge into the public sewerage and sewage treatment system, the undertaker’s duties and whether such deficiencies would reasonably be expected to be addressed by the time the development imposes an additional burden on the system.
6. As alluded to in 4. above, the precise potential effect of a drainage condition needs to be clearly addressed. In particular, whether the practical effect would be to impose pressure on a developer to contribute to the cost of works which should properly be funded by the undertaker through the charging system contained within the WIA1991, or to give the undertaker an incentive to delay in the hope that the developer will do so. Such a condition would be unreasonable.
7. The same applies to a condition which has the effect of compelling the developer to undertake attenuation works on site or elsewhere to alleviate the impact of foul flows from the development on the sewerage and sewage treatment system. This is because section 112 of the WIA1991 provides a means for the sewerage undertaker to require such works as part of the private sewerage system serving the development, but on condition that the additional cost is borne by the undertaker, not the developer.
8. Finally, it is important to consider the differences between the provision of sewerage and sewage treatment and other infrastructure such as roads, schools, GP surgeries etc. It is clear that a development may need to be phased to ensure that such infrastructure is available with the necessary contributions made by developers to the cost of its provision. This is not the

case with sewerage and sewage treatment provision as there is a statutory duty and statutory mechanism for financing it. Conversely no person has a statutory duty to provide roads, schools, GP surgeries etc. to serve developments and there is no means of covering its cost by charging users.

Given this analysis, planning authorities should not be refusing planning permission or imposing foul drainage conditions on developers as a matter of course or routinely, without addressing the above.

It is possible to interpret some passages in the PPG as if they were suggesting that foul drainage conditions should be imposed routinely, or that it is acceptable for a developer to be required to fund or to contribute to the cost of new sewerage infrastructure. This is misleading as conditions relating to sewerage and sewage treatment must be considered and justified against the tests in para. 206 of the NPPF and explained in the PPG. In particular, given the provisions laid down by Parliament in the WIA1991, careful consideration will be required as to whether such a condition is necessary and whether it is reasonable. Having regard to the nature of the plan-led system and the time-scales involved in implementing a permission for residential development, it is entirely reasonable to expect a sewerage undertaker to make provision for the necessary sewerage and sewage treatment infrastructure so as to avoid the adverse effects that may or may not be caused by new development and to fund this through the normal means of charges.

### **The Sewerage Undertaker's Duties**

It is the opinion of ULS that sewerage (the piped network) or waste water treatment capacity for a development should be made available by the incumbent sewerage undertaker on the basis that reasonable notice of a proposed development has been provided by a developer or landowner. Where the impact on the sewerage system is negligible no additional capacity will be required and no action by the sewerage undertaker would be necessary. As such, foul drainage does not generally represent a constraint in planning terms to development. There is a separate statutory regime in place which adequately addresses foul drainage matters. Should a development, such as the one proposed, be granted outline planning permission, the Sewerage Undertaker has sufficient time and has the knowledge and expertise to fully assess the potential impact on its sewerage network and implement any necessary improvement works that may be required to accommodate new foul flows.

If following further investigation the Sewerage Undertaker considers that improvement works are required to its sewerage network or sewage treatment works, the Sewerage Undertaker is funded to ensure that such improvements are made in order to comply with its statutory duty to "provide, improve and extend" its network. It would therefore be unreasonable to delay the start or progress of this development once planning permission has been granted. Imposition of a foul

drainage planning condition, the effect of which is to impose pressure on a developer to contribute to the cost of works which should properly be funded by the sewerage undertaker, would be unreasonable and consequently conflict with some or all the six tests as set out in the PPG.

With regard to sewage treatment, each Waste Water Treatment Works (WWTW) in a sewerage undertakers operating area has a consent to discharge treated effluent to a body of water (typically a watercourse/river). Such consents are issued by the Environment Agency (EA) and incorporate a number of parameters in relation to both biological load (quality of effluent discharge) and dry weather flow (quantity of discharge). A WWTW is required by the EA to operate within these consent parameters.

The quality and quantity of effluent discharged from a WWTW is measured by the sewerage undertaker responsible against its consent parameters, typically on a monthly basis giving 12 reports per year to the EA confirming whether or not the WWTW is operating within its consent. Clearly as a particular works approaches the limits of its consent parameters, a sewerage undertaker must give regard to the likely level of growth in the catchment area of the WWTW and look at what investment may be required, either by installing new plant or altering the operation of existing plant, to ensure any new flows can be accommodated without exceeding the limits imposed by the EA. Any sewerage undertaker which does not take such action for works approaching capacity is failing in its statutory duty under section 94 as outlined above. How the quality and quantity of discharge from a WWTW is measured varies from specific monitoring devices within a works to estimates based on the size of the population for the contributing catchment area.

Should a particular WWTW fail to meet its consent parameters on two or more occasions within a twelve month period, discussions will be held between the EA and the sewerage undertaker as to what improvements can be made to bring discharges back within the set limits. During such discussions, the consent parameters may be tightened or amended to suit the facts of the case and to ensure water quality in the receiving body is protected. In reality, because of the gradual nature of growth in any particular area, even where a works is deemed to have failed against its consent parameters, this is only likely to be by a very small amount and provided appropriate action is taken by the sewerage undertaker, an agreement can be made with the EA as to how the WWTW can be managed to ensure it operates within its consent (whether or not this is amended).

Where a WWTW is close to or has failed to meet its consent parameters, it is often possible to implement temporary measures (in operational procedures or provision of additional storage/treatment apparatus) to mitigate against the immediate small exceedance in quality or quantity while funding is allocated and feasibility studies

carried out to allow a long term solution to be implemented to ensure that future additional growth can be catered for.

It is a matter for any sewerage undertaker to manage its consents with the EA and ensure that its WWTW's stay within their consent parameters. This is an ongoing process and it is unreasonable to suggest that a specific development, particularly one which is modestly sized in comparison to overall catchment population, will have a significant and unmanageable influence on a WWTW and its ability to operate within limits set by the EA. This is not a matter which can be influenced by a developer and as such to prevent or delay a development from proceeding because a sewerage undertaker may be forced to take action and fund improvement works to comply with its statutory duties is unreasonable.

### **The Sewerage Undertaker's Funding**

In order to fund its obligations under the WIA1991 as set out above, sewerage undertakers have two basic funding streams which are summarised below.

- General Sewerage Charge - An annual charge levied by the sewerage undertaker whilst ever a property remains connected to the public sewerage system.
- Sewerage Infrastructure Charges – Each new dwelling constructed on a development, together with any associated commercial/social/educational premises, which connect to a sewerage undertakers' sewer for the first time have a charge levied upon them by the relevant sewerage undertaker (i.e. one sewerage infrastructure charge is paid by the developer for each new property constructed and connected or the equivalent number of charges in the case of commercial/social/educational premises). Infrastructure charges are designed to meet the costs of local system enhancements that are incurred by sewerage undertakers when new developments are connected to their network. The water industry regulator, Ofwat, has issued guidance to this effect (in - RD 2/95).

Funding for improvements to the sewerage network and the sewage treatment activity, including improvement works required to accommodate new foul flows from a development is funded through general sewerage charges.

Sewerage Undertakers are financed in 5 yearly cycles (AMP periods) and have flexibility in the way that such funding is applied. It is clearly not possible at the beginning of a 5 year period to plan for all works which may be required for its duration, particularly given the changing nature of development activities and the planning process. Therefore, in addition to funding for individual capital projects identified in a sewerage undertaker's business plan, Ofwat, in determining price reviews at the start of an AMP period, also allows an amount for general funding to

spend on non-specific growth. This general growth pot is clearly intended to cater for new developments where potential upgrades may be required.

Sewerage Undertakers have flexibility in how they allocate the funding they receive for general growth and need to apply it to areas in which improvement works are required on a priority basis. How any sewerage undertaker allocates funding within its business is a matter for it to manage, but it must do so in a manner which allows it to comply with its statutory duties at all times. It is not appropriate for a sewerage undertaker to use the planning system to seek additional income from developers because it has either failed to secure sufficient funding in its current AMP period, or is unwilling to allocate sufficient funds to carry out duties it is required to perform under its governing legislation.

In addition to the general sewerage charge, each new dwelling constructed on this development will be subject to a sewerage infrastructure charge. Infrastructure charges are designed to meet any costs that are incurred by sewerage undertakers in relation to local system enhancements required to sewerage networks when new developments are connected to its network. It is also important to note that while in all cases infrastructure charges are levied for properties constructed on new developments, not all sites will give rise to the need for local system enhancements. The result being that all sewerage undertakers have a funding pot of collected infrastructure charges which can be allocated to where spending is required within its operating area.

Where connection is made to a public sewer under section 106 of the WIA1991, there is no statutory mechanism within the WIA1991 to allow sewerage undertakers to secure additional funding from developers to supplement their general sewerage and infrastructure charges and to do so would be inappropriate.

In light of the above analysis which evidences that sewerage undertakers are funded to improve public sewer networks and sewage treatment facilities, it is inappropriate to seek any further financial contributions from developers through use of the planning system. To do so would result in a form of double charging. It is for this reason that any condition which could specify that a development is not commenced or occupied for a certain period of time unless additional funding is secured from a developer is inappropriate, unreasonable and in direct conflict with the water industry's governing legislation.

## **Summary**

Unless sewerage undertakers have certainty that sufficient development will take place in a particular area, it is unlikely that any investment in sewerage or sewage treatment will be allocated. In the event that the Sewerage Undertaker considers that it has hydraulic or capacity issues with its sewerage and sewage treatment systems

for this and other development in the area, it would be unreasonable and illogical to refuse planning permission on the grounds that no sewerage or sewage treatment improvement works are planned for the network to which this development will discharge foul flows. Only granting planning permission for developments without foul drainage planning conditions will ensure that the Sewerage Undertaker fully considers the current drainage network and systems in line with its statutory duties. This will provide a benefit not only to this new development, but also potentially the existing settlement.

Because of the rights and duties outlined above, where a sewerage undertaker perceives there to be a potential inadequacy in its sewerage or sewage treatment systems to accommodate new foul flows, it will often make representations to planning authorities recommending that planning conditions relating to foul drainage are imposed. The typical conditions suggested by many sewerage undertakers commonly have the effect of compelling the developer to meet the cost of improving the public sewerage system or sewage treatment works or else face a long (sometimes indefinite) delay before the sewerage undertaker itself will carry out any necessary work.

The point of principle is that as a matter of law, the WIA1991 expressly places a duty on sewerage undertakers to provide, improve, extend and maintain a system of sewers and sewage treatment facilities so as to ensure that their area is and continues to be effectually drained. The WIA1991 then gives domestic owners and occupiers an absolute right to connect into the public system (subject only to their private drains being of proper construction and condition). To apply planning policy so as to relieve the undertakers of that duty and negate the rights of owners and occupiers conflicts with primary legislation which already protects both new developments and existing property owners. This is unreasonable where matters relating to foul drainage can be suitably addressed through the appropriate statutory regime which governs the water and sewerage industry.

In our experience, planning authorities often impose a planning condition in relation to foul drainage on the advice of sewerage undertakers without proper consideration of not only how this impacts on effective and economic development, but also whether it conflicts with statutory rights and duties imposed by water and sewerage industry primary legislation.

When considering the drainage related aspects of a planning application, the correct approach in law is as follows:

- To have due regard to the rights which the developer would have to connect the development to the public sewerage system and what impact to the environment that would have but also taking into account the

general duty imposed on sewerage undertakers under section 94 together with the charging provisions of the WIA1991.

- To carefully consider whether those impacts would be such as to justify refusing permission, and if so whether they could be mitigated by a planning condition.
- To carefully consider whether any such condition would meet the policy tests in the NPPF and PPG.

Sewerage undertakers often claim that funding cannot be allocated to plan and implement improvement works (and in some cases to assess whether such works are required) to ensure new foul flows can be accommodated in the public sewer network/treatment facilities. It is important to bear in mind that sewerage undertakers are commercial organisations (and not statutory consultees for planning applications). Imposing a planning condition allowing one commercial operator (the sewerage undertaker) to compel another (the developer) to meet the cost of providing the infrastructure the sewerage undertaker has a statutory duty to provide is unreasonable. It also has the potential to impose unnecessary costs on an industry (house building) which is important to the economy of the United Kingdom and does not promote effective and economic development. If the cost of upgrades to the public sewerage network, which in any case should not be met by the developer, is disproportionate to the proposed development, the effect is to prevent that development from proceeding, even though in planning terms it is otherwise acceptable, and may be highly desirable.

It is also important to note that at least three out of the ten sewerage undertakers do not currently seek financial contributions from developers and will work with them to ensure that any necessary upgrades to their networks are implemented in a timescale to suit the development regardless of whether it was in a local plan or not. This evidences that sewerage undertakers are funded to enable them to carry out their statutory duties outlined above, but many are unwilling to allocate the necessary funds to support house building in this country.

It is clear that any planning condition relating to foul drainage is unnecessary and unreasonable as it would duplicate matters which are already satisfactorily dealt with under a separate statutory regime. Unless there is clear evidence that to fail to impose a condition would have a detrimental effect which cannot be avoided through appropriate action by a sewerage undertaker in a reasonable timeframe, connections to the local public sewerage system should be dealt with via the legislative framework contained in the Water Industry Act 1991 (as amended) rather than planning legislation. Imposing a condition without proof that detriment would be caused which cannot be mitigated against through action by the sewerage undertaker in pursuance of its statutory duties is unreasonable and would fail some or all of the 6 tests in the NPPF. The corresponding advice in the PPG explains in more detail these six tests. The detail included in para. 206 of the NPPF and



explained in the PPG verifies that most foul drainage planning conditions fail the following tests:

- Necessity – There is no definite planning reason for such drainage conditions to make for acceptability in planning terms. All relevant matters are suitably addressed by water and sewerage industry legislation.
- Relevance to planning – Again all foul drainage matters are already addressed by separate primary legislation
- Enforceability – The upgrade of a sewerage undertaker's sewerage network or sewage treatment works is a matter over which the applicant has no control.
- Reasonability – A foul drainage condition could place an unjustifiable and disproportionate burden on the applicant, by either delaying the development due to a lack of action by a sewerage undertaker (by failing to comply with its statutory duties), or by forcing the applicant to provide funding for works which the sewerage undertaker is already suitably funded by statutory provisions.

Conditions relating to sewerage and sewage treatment must be considered and justified against the tests set out in the NPPF and the PPG. In particular, given the rights and duties in the Water Industry Act 1991, careful consideration is required as to the time-scales involved in implementing a permission for residential development. It is reasonable to expect the sewerage undertaker to make provision for the necessary infrastructure so as to avoid adverse effects, and to fund this through the normal means of charges. A foul drainage condition for developments would therefore fail the test of reasonableness laid out in the NPPF, given the timescales for the ultimate discharge of foul flows from the development to the public sewerage and sewage treatment system.

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