Matter 15/ Infrastructure

Joint Statement by SDNPA / Wealden District Council / Environment Agency/ Southern Water in response to information submitted by Wates Developments and Pelham Homes re use of Package Treatment Works
February 2012

Additional Statement (SDNPA/ WDC/ EA/ SW) for Examination into Wealden District Council and South Downs Core Strategy

1.0 Introduction

The provision of private sewerage for large scale developments in strategic locations should not be seen as any alternative to proper infrastructure planning. Implementation of such could breach statutory duties imposed upon the relevant agencies concerned in respect of water framework directive and Habitats Regulations matters in addition to policies contained within the Regional Strategy .

The Environment Agency works together with the sewerage undertaker and Local Planning Authority (LPA) to ensure that waste water capacity is taken into account in LPA development plans. Development should be matched to mains capacity or, where new mains capacity is required, this should put in place **before** a development occurs or is occupied. This approach is wholly supported by Planning Policy Statements (PPS) 11, 12 and 23.

Even where new mains infrastructure is required the Environment Agency needs evidence that this is environmentally acceptable. Should a site be allocated without this certainty and a private package treatment plant (PTP) is not environmentally acceptable the site will be rendered undeliverable. This has significant implications upon the deliverability and therefore the soundness of any affected Development Plan Document (DPD)

2.0 Non Mains Connection

The Environment Agency expects developments discharging domestic sewage to connect to the public foul sewer where it is reasonable to do so. The Environment Agency will not normally grant a permit to discharge for a private sewage treatment system where it is deemed reasonable to connect to the foul sewer.
Where there is no strategic plan in place to direct development to locations where there is adequate mains infrastructure the Environment Agency will consider alternative drainage solutions on a case by case basis. This is provided it has been demonstrated that a connection to the public sewer is not feasible in terms of cost and/or practicability, and provided the alternative solution can meet the required standards set by the Environment Agency. This sequential approach is supported by PPS 11, 12 and 23 and DETR Circular 03/99.

Southern Water has already commissioned work to assess and arrive at the most appropriate mechanism for achieving mains connections to enhance future capacity in South Wealden/ Eastbourne. This appropriate, proper and long term planning approach should not be compromised by any short term expediency of use of package treatment works coupled with the inherent uncertainty over their effectiveness and long term maintenance and management .

Through the Ofwat periodic review of water company prices, water companies can get funding to resolve any problems with mains infrastructure and plan for improvements. Private PTPs cannot offer certainty that they will be both operated and maintained effectively for the lifetime of the plant, and therefore pose far greater risk of uncertainty than any mains connection.

In addition to these concerns there is a significant risk that the discharge from a PTP may not be acceptable and therefore no certainty that the Environment Agency will permit the discharge. This high level of uncertainty also debars the Local Planning Authorities, in this case the South Downs National Park Authority and Wealden District Council , from being able, as the legislatively prescribed Competent Authority to meet the duty imposed upon them by the European Habitats Directive.

The Environment Agency is the competent Authority, under the Environmental Permitting Regulations (England and Wales) 2010 for determining discharges to surface waters. In determining whether to grant a permit the acceptability of the proposed discharge needs to be assessed. This will be dependant on the type of effluent, volume and flow rate and the sensitivity of the receiving waters and will therefore be done on a case by case basis. The Environment Agency will determine the environmental standards the plant must achieve. Should the risk to the receiving waters be unacceptable the Environment Agency will refuse to grant a permit.

3.0 Environmental Acceptability

From the Environment Agency's perspective Environmental acceptability is considered against the requirements of domestic and European law, including the Water Framework Directive (2000/60/EC). In England and Wales, the Environment Agency is the 'competent authority' for carrying out the Water Framework Directive (WFD).

The Directive requires member states to aim to achieve good status for **all** their water bodies and further to *implement the necessary measures to **prevent deterioration** of the status of all water bodies (Art.4.1)*. The Environment Agency takes the following approach when assessing the ‘no deterioration’ requirement of the Directive:

i. Aim to prevent deterioration in the status of the water body reported in the first River Basin Management Plan. This is done for each element that makes up the classification (for a freshwater discharge the elements which are assessed are ammonia, biochemical oxygen demand and phosphate)
ii. Aim not to compromise the water body from being able to meet its status objective in the future, the default objective being ‘good status.’

To asses whether a new discharge fulfils these requirements the Environment Agency carries out complex modelling which takes considerable time. The outcome of the modelling cannot be pre-determined. Each proposal is assessed on a case by case basis, and will be dependant on the current status and sensitivity of the receiving waterbody and the dilution available. The impact of the discharge on downstream waterbodies must also be considered.

The Environment Agency must also consider the potential impact of the discharge on European designated sites and ensure compliance with the Habitat Regulations (Conservation of Habitats and Species Regulations 2010 (SI no. 2010/490)). This is achieved though consultation with Natural England during the permit determination process. Where the receiving waterbody is designated under other legislation, the Environment Agency must also have regard to this.

There is also an acute additional risk of a proliferation of PTPs leading to cumulative impacts and risk which will also need to be considered.

The need for the developer to clearly demonstrate that the discharge will not lead or contribute to environmental or amenity problems including flood risk is in line with Circular 03/99.

4.0 Friday Street Farm Foul Drainage Proposals

The Environment Agency is not satisfied the proposed PTP at Friday Street Farm and put forward by Wates developments will not have a significant impact on the Mountney Levels and the wider drainage system. Nor are the Local Planning Authorities able, with certainty (as is required of them) to confirm that there will be no adverse impact upon the Pevensey Levels as a designated site of European significance.

From our (Environment Agency's, Southern Water and Local Planning Authorities) initial assessment of the information submitted by both Wates and Pelham Homes, several areas of concern have been highlighted. In respect of the information supplied both by Wates the following matters are of particular significance.

i. The proposals put forward have failed to consider any water quality impact of the discharge on the Mountney Sewer and Langney Sewer. The applicant must be able to demonstrate that the discharge will not cause deterioration in water status and will not compromise achievement of its status objective.

ii. The Langney Sewer is also designated under the Freshwater Fish Directive (78/659/EEC). The Langney Sewer drains to the Salt Haven which enters Pevensey Bay, a designated Bathing Water (2006/7/EC). The impact of the proposed discharge on these designations have not been considered

iii. The applicant has not sought the advice of the Environment Agency with regard to the likely conditions of any permit to discharge from a private PTP, in order to determine whether these conditions can be complied with. Due to the discharge location and the complexities of the modelling required the Environment Agency is unable to provide indicative limits without much more information and an adequate consultation period.

iv. The Mountney Sewer feeds into the Langney Sewer. Given the sensitivities of the wetland habitat in this area the Environment Agency would require an up to date ecological survey to enable an assessment of the level of risk posed by the development and associated discharge.

v. The Langney Levels Site of Nature Conservation Importance (SNCI) was designated for its potential for good aquatic invertebrate communities. It has the ideal field and ditch system to support the Lesser Whirlpool Ramshorn Snail (the interest features of the Pevensey Levels cSAC) and therefore contrary to the ecological report submitted by Wates, the Langney Levels is one of the most likely places to find the snail. The Fen Raft Spider (an interest

features of the Pevensey Levels Ramsar site) has also been found on the Eastbourne Levels and also historically on the Mountney Levels.

vi. Wates have failed to demonstrate in their assessment how potential changes to the existing hydrological connectivity and the hydrological regime of the Mountney Levels rivers, streams and wetland can be avoided. Any impact on water quality from the discharge could result in the loss of valuable habitat connecting the Eastbourne Marshes and Pevensey Levels as a wider hydrological unit.

vii. The flood risk from the effluent discharge has not been assessed. The current land drainage system where the effluent would discharge is at full capacity, as identified in the Cuckmere and Sussex Havens Catchment Flood Management Plan, and is therefore unlikely to be acceptable.

viii. Wates is not able to give any assurances regarding future management and or maintenance of the system which they are promoting nor satisfy the competent Authorities in respect of the certainty of these meeting their duties under Habitats Regulations.

The Local Authorities and the Environment Agency consider that the discharge from these PTPs is likely to have significant impact on the supporting network around the site, and the areas which also support protected/notable species i.e. the Mountney Levels which are part of the protected area designation. The Environment Agency and the Local Authorities are therefore unable to support the proposals put forward. In respect of the information more recently received from Pelham Homes the same fundamental concerns apply.

Pelhams have not offered a detailed plan for how and where the wastewater generated will eventually be discharged to any nearby catchments or water bodies and no assessment has been provided of the environmental impacts.

Indeed there is no indication in either of the sets of material submitted as to what , if any particular brief was prepared in eliciting what appear to be little more than hypothetical solutions to undefined issues, and with no potential therefore to clearly and with certainty assess any possible impacts.

Given the work commissioned by Southern water to find a mains solution and the environment Agency's preference for a mains connection we do not feel that private PTPs are a necessary or appropriate way forward.

5.0 Appeal Ref: APP/C3810/A/10/2132014 Angels and Hyde Nurseries

The above appeal decision was submitted by Wates developments as an argument in favour of the use of PTP's and the Local Authorities, Environment Agency and Southern Water offered the opportunity to comment upon this decision. The Angels and Hyde development is located in Barnham, West Sussex, where there is no adopted or submitted Core Strategy to direct housing allocations. The Environment Agency therefore assesses developments on a case by case basis as they come forward.

Barnham falls within the Lidsey wastewater treatment works (WWTW) catchment. Whilst there is headroom at the works, the sewer network is subject to surface water and groundwater entering the system especially at times of high rainfall and when groundwater levels are high. This overloads the sewers, causing sewage to surcharge and cause pollution. The Environment Agency objected to the development as the applicant was unable to demonstrate the development would not result in an increase in flows to a sewer network and therefore would exacerbate the existing situation.

In this particular case the Planning Inspector accepted that whilst logic suggested that the development would add to the sewage flows in the Lidsey catchment, there was no technical evidence to quantify this. In this instance however the Inspector noted that he was *unable to unequivocally conclude that the development is capable of being connected to the existing foul sewer network without giving rise to an unacceptable increase in pollution incidents.* (paragraph 34 of the appeal decision refers).

This issue of certainty, or rather the lack of it was clearly acknowledged by the Inspector in arriving at his decision . However we would submit that the relevant test to be applied in respect of growth proposed in South Wealden and where the matter of designated sites of European significance is of particular relevance is one of much greater rigour.

The condition imposed to resolve the foul drainage issues was such to allow for either mains connection or private treatment plant to be pursued. There is no guarantee that a private package treatment plant will be acceptable at this location and without a permit from the EA, the development will in any case have to connect to the mains network.

It is important to note that there are no European designations affecting Barnham and that this therefore was not part of any consideration that the Inspector had to take account of including any duty imposed in respect of ether Habitats Regulations or indeed policy NRM5 of the Regional Strategy. These matters have a significant role in determining whether discharges are acceptable and where even greater caution would have been required where development is located within designated areas. Indeed both in the RS and within the recent environmental report on the revocation of the RS it is confirmed that the necessary test is of certainty (of no adverse impact) in considering plans and proposals - both individually and in combination .

In the appeal in question, and unlike in the case of the joint core strategy subject of this examination, there was not the clear and united concern of all of the relevant bodies (Environment Agency, Southern Water, and Natural England and the Local Authorities) that such treatment works were unacceptable and did not provide any certainty. Nor was there work commissioned to find an acceptable mains solution with the prospect of funding to deliver the same.

The Inspector also clearly sets out at Paragraph 23 of his decision letter that this does not set any precedent . The site subject of the appeal does not affect any European site, nor even was it designated as one of national significance (SSSI).In addition to the EA responsibilities and duties under the Water Framework Directive, and those of the Local Authorities (SDNPA and WDC) in respect of the Habitats Regulations and the level of certainty required the matter of RS Policy requiring that the highest level of protection be afforded to European sites was also not a consideration in this appeal. In conclusion therefore the LPA's, Environment Agency and Southern Water do not consider that there are any significant parallels to be drawn between the appeal case and the arguments now being put forward by Wates and Pelham Homes in advocating a package treatment works approach for delivery of strategic growth in the area of South Wealden .

In the South Wealden District there will clearly be insufficient headroom at Haisham North and Hailsham South WwTWs beyond the proposed level of housing in the Core Strategy to accommodate further development. Pending the identification and implementation of an environmentally acceptable mains solution and when it would then be appropriate to review the Core Strategy private PTP proposals are not considered to afford the degree of certainty required by the SDNPA/ WDC, EA or SW to meet their statutory duties. Development predicated upon such an approach will be both unsound and undeliverable.

On behalf of : South Downs National Park Authority, Wealden District Council, Environment Agency, Southern Water .

10th February 2012