

Wyre Local Plan (2011 - 2031)

Examination in Public

**WRITTEN SUBMISSION OF
UNITED UTILITIES WATER LIMITED**

Matter 8 – Allocations Forton and Hollins Lane

May 2018

Introduction

Wyre Borough Council (WBC) has submitted the local plan for the period 2011 - 2031 for examination. In accordance with national planning policy (specifically paragraph 162 of the National Planning Policy Framework), as well as, the status of United Utilities Water Limited (UUW) as a statutory consultee in the preparation of development plans, UUW has worked closely with the local planning authority on the preparation of a new local plan. WBC and UUW have engaged in meaningful discussion regarding the practical issues associated with ensuring water and wastewater infrastructure is available for the development that is proposed during the plan period.

This submission is made to explain the position of UUW having received a request for clarification from the WBC with respect to the availability of infrastructure within Forton and Hollins Lane given the volume of development identified within these locations. The submission is subsequent to previous correspondence identifying the concerns of UUW with respect the settlements of Forton and Hollins Lane (see appendix 1).

The statement is relevant to the consideration of Matter 8 – Allocations Forton and Hollins Lane, specifically the following questions.

Infrastructure

4.1 Will the infrastructure to support the scale of development proposed in the settlement be provided in the right place and at the right time, including that related to transport, the highway network, health, education and open space?

The remainder of this note is set out under the following headings.

- 1) United Utilities Water Limited.
- 2) The Wastewater Drainage area of Forton and Hollins Lane.
- 3) Section 106 Water Industry Act 1991.

- 4) The Determination of Investment Decisions by Water and Sewerage Companies.
- 5) Judgment in Supreme Court Barratt Homes Limited v Dwr Cymru Cyfyngedig 2009 UKSC 13.
- 6) The Position of UUW.
- 7) Proposed Modifications.
- 8) Conclusion.

1) United Utilities Water Limited

UUW is the statutory water and wastewater undertaker for the north west of England and its area of operation includes the catchment for Forton Wastewater Treatment Works (WwTW). As the statutory water and wastewater undertaker for the North West of England, UUW has a duty to ensure that an area is "effectually drained". This includes working with developers on detailed drainage proposals and coordinating development with infrastructure upgrades to ensure that growth does not have an unacceptable effect on the service experienced by existing or proposed customers or on the environment prior to the upgrade of any infrastructure.

2) Forton and Hollins Lane Drainage Areas

The settlements of Forton and Hollins Lane are currently served by Forton WwTW. Plans of the drainage area for the WwTW are included at appendix 2. The drainage area serves approximately 400 existing properties.

The key development allocations in the submitted Local Plan within the drainage area for Forton WwTW are set out below.

- Forton Extension (Policy SA3/4), which has a housing capacity of 468 dwellings and 1 hectare of employment;

- North of New Holly Hotel and Bodkin Cottage, Hollins Lane (Site SA1/14), which has a housing capacity of 38 dwellings. This site has outline planning permission for 38 dwellings (permission reference 16/00835/OUTMAJ); and
- Land East of Hollins Lane, Hollins Lane (Site SA1/15), which has capacity for 51 dwellings and has two outline planning permissions for 8 dwellings (planning permission reference 15/00968/OUTMAJ) and 43 dwellings (planning permission reference 17/00233/OUTMAJ).

The overall capacity of the allocations is therefore 557 dwellings and 1 hectare of employment. A plan showing the location of the allocations is included in appendix 2.

It should be noted that the above is additional to other planning permissions that have been granted within the catchment.

3) Section 106 Water Industry Act 1991

Under s106 Water Industry Act 1991 (see appendix 3) the owner or occupier of any premises is entitled to have his drains or sewer communicate with the public sewer and to discharge foul water and surface water from his premises to that public sewer. On this basis a housing developer with planning permission may construct a drainage network and connect it to the public sewer.

A developer is not entitled to discharge foul water into a surface water sewer or (except with the approval of the sewerage undertaker) surface water into a foul sewer. However, where a public combined sewer is provided (i.e. one which receives both foul and surface water) there is no similar restriction on connection and discharge to it.

It is worth noting that the settlements of Forton and Hollins Lane are largely served by combined public sewerage systems.

Where a developer wishes to make a connection to the public sewer network under s106, he must give notice of his proposals to the wastewater undertaker. The undertaker has 21 days in which to object to the connection being made if the mode of construction or condition of the drain or sewer either 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. There are no other grounds for the undertaker to refuse to permit a connection to be made. In

particular, there are no circumstances in which an undertaker may refuse to permit a connection on the ground that its sewer network or associated wastewater treatment works has insufficient capacity. This point has been explored and resolved in the case of Barratt Homes Limited v Dwr Cymru Cyfyngedig 2009 UKSC 13 which is considered in greater detail below.

Any questions as to the reasonableness of an undertaker's refusal to permit a connection are to be determined by Ofwat.

It is very relevant to note that there is a right to connect for foul water for domestic purposes and surface water from premises. It is also particularly pertinent to note that the flows that arise from a surface water discharge are significantly greater than the flows that arise from a foul water discharge. Surface water connections therefore have potential to put a significant strain on wastewater infrastructure.

4) The Determination of Investment Decisions by Water and Sewerage Companies

Every five years Ofwat, the economic regulator of the water industry, carries out a review of the prices that the appointed water and sewerage companies can charge their customers. This includes taking decisions on the services customers receive and the investment companies need to carry out. Ofwat determine these charges on the basis of best value for customers. The most recent price review by Ofwat occurred in 2014. The next review is scheduled for 2019.

The preparation of local authority development plans provides strategic co-ordination between development planning and infrastructure planning. Water and sewerage companies are a statutory consultee through the development plan process. The planning process provides details on where growth may occur and is one factor which helps to inform the five yearly investment submission to Ofwat and infrastructure investment forecasts. The degree of confidence is improved where our investment decisions are based on up to date development plans and planning permissions as opposed to unforeseen, unallocated sites. This is often not the case due to a lack of up to date development plans and a disconnect between the timing for the preparation of development plans and the timing for the five yearly price review investment submissions to Ofwat.

There are practical issues associated with the time that it takes to respond to the delivery of new infrastructure to meet the needs of new development. Notwithstanding the fact that water and sewerage companies are not a statutory consultee on the determination of applications for planning permission, the planning process offers the only opportunity for water and sewerage undertakers to minimise the impact of growth on the well-being of the community and the environment. The planning system affords a water company an opportunity to work with a developer to minimise the impact and to coordinate the timing for the delivery of new development with the delivery of infrastructure upgrades. This reflects National Planning Practice Guidance which states:

“Infrastructure

Plan-making may need to consider: (inter alia)

Phasing new development so that water and wastewater infrastructure will be in place when needed.

Paragraph: 005 Reference ID: 34-005-20140306”

The development plan system offers an opportunity to take a holistic view of where and when development will occur. In contrast to ad hoc windfall applications, a plan led system allows the cumulative impacts of development to be considered over the longer term so that our infrastructure investment response is also long term and holistic rather than short term and piecemeal. This is important as Ofwat expect water and sewerage companies to operate efficiently.

For both water and wastewater, the impact of growth on infrastructure is dependent on location. It is also informed by the detail of the drainage proposals and the size of sites. Different sites will have different impacts. It is not possible to simply look at the overall growth for the borough or region and make long term investment decisions. It is particularly important to have regard to whether both foul and surface water will discharge to the public sewerage system as there is a right to connect for both.

5) Judgment in Supreme Court Barratt Homes Limited v Dwr Cymru Cyfyngedig 2009 UKSC 13

The question of the right to connect has been considered in detail by Lord Philips in the Supreme Court Judgement Barratt Homes Limited v Dwr Cymru Cyfyngedig 2009 UKSC 13. This identified the disadvantage suffered by a wastewater undertaker because of its duty under s106 Water Industry Act, when faced with requests for connections from developers.

This Judgement looked at whether it is the property owner or the sewerage undertaker who is entitled to determine the point of connection to the public sewer. It also considered the wider issue associated with the interaction between the planning and water regulation systems. A full copy of the Judgement is included within appendix 4. For ease of reference, UJW wishes to draw the attention of the Inspector to paragraphs 41, 42, 57 and 58 of the Judgement. The key points from these paragraphs are set out below.

- Whilst the right to connect may create no problem in the case of an individual dwelling house, it is '*manifestly unsatisfactory*' in the case of larger developments that have the potential to significantly increase the load on the public sewer (paragraph 41).
- The budgets of sewerage undertakers and the charges that they are permitted to make have to be agreed by Ofwat and that this process takes place at five yearly intervals (paragraph 42).
- 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 as pointed out by Ofwat in their letter to all sewerage undertakers (paragraph 57).
- In agreement with the Court of Appeal, Lord Philips stated that '*more thought may need to given to the interaction of planning and water regulation systems*

under the modern law to ensure that the different interests are adequately protected' (paragraph 58).

6) The Position of U UW

In accordance with previous correspondence to WBC (appendix 1), we wish to emphasise that existing settlements will generally be supported by water and wastewater infrastructure which is proportionate to its size. Therefore disproportionate growth in any settlement, especially small settlements, has the potential to place a strain on existing water and wastewater infrastructure. The volume of growth proposed in Forton / Hollins Lane is very large compared with the size of the settlements. The Council is currently proposing growth within the settlement in excess of 550 dwellings. This compares with an existing settlement (Forton and Hollins Lane) of approximately 400 properties. It is for this reason that U UW has previously stated that it would prefer growth within the settlements of Forton and Hollins Lane to be more proportionate to the size of the existing settlements.

That said, given the intention of WBC to progress with the allocations at Forton and Hollins Lane, we have communicated that there is likely to be a need to invest in our infrastructure, specifically wastewater infrastructure, in order to respond to the growth that is proposed.

A fuller understanding of the need to invest will be gathered once the nature of the allocations are confirmed and once more details on the approach to drainage are available.

With regards to the impact on wastewater, it is particularly important to understand the detail of the drainage proposals. This includes whether both foul and surface water will discharge to the public sewerage system as well as connection points and the rates of discharge. The flows that arise from a surface water connection are significantly greater than the flows that arise from a foul water connection. Surface water connections therefore have potential to put a significant strain on wastewater infrastructure if not managed.

U UW wishes to emphasise the importance of a foul only connection to the public sewer. In line with national government guidance, U UW highlights the importance of

the surface water hierarchy being fully explored in advance of any connection of surface water to the existing public sewer. UUW wishes to highlight the importance of including SuDs (sustainable drainage systems) in the development allocations in Forton and Hollins Lane and indeed within all allocations throughout the borough.

As noted above, a fuller understanding of the impact on water and wastewater infrastructure is gathered when more details are known on the approach to drainage. This is often at the planning application stage. When these details are available, UUW will be able to better understand the impact on infrastructure and as a result it may be necessary to recommend mitigating measures through planning conditions. These mitigating measures may include coordinating the delivery of development with the timing for the delivery of infrastructure improvements if identified as necessary. UUW also wishes to work with applicants to agree the approach to foul and surface water drainage such as specifying the most appropriate point of connection for foul water to the public sewer and any approach to the pumping of foul water that may be necessary.

Notwithstanding the absence of detailed information, including the detail of any approach to drainage, UUW wishes to express its strong preference for policy provisions which ensure applicants are required to agree the approach to foul and surface water drainage and the timing for connection of flows to the public sewer. Our preference is for the policy to state that unless otherwise agreed with local planning authority in liaison with UUW, there shall be no connection to the public sewer from the allocated sites in Forton and Hollins Lane other than in accordance with a timetable to be agreed with UUW which ensures appropriate wastewater infrastructure is in place to meet the needs of the development.

We have previously recommended that the council also gives early thought to a strategic approach to drainage proposals with the landowners and alongside the lead local flood authority for all the allocations within Forton and Hollins Lane. The fragmented nature of the land ownership for the allocated sites is noted. We wish to highlight the challenges associated with allocations in multiple land ownership. There is a risk that each housing parcel will come forward on the basis of land ownership rather than on the basis of a coordinated approach to the delivery of infrastructure. We therefore recommend consideration is given to how the drainage proposals are brought forward as part of a wider, holistic strategy which coordinates the approach to drainage between phases, between developers, and over a number

of years of construction including interconnecting phases within a wider allocation. Infrastructure should be sized to accommodate flows from interconnecting phases and drainage strategies should ensure a proliferation of pumping stations is avoided on a phased development.

We believe this further highlights the need for a coordinated approach between landowners as part of a masterplanning exercise to understand how the site can be brought forward in a coordinated manner in respect of all infrastructure before applications for planning permission are granted.

7) Proposed Modifications

In respect of site references SA3/4, S1/14 and SA1/15, we recommend the following policy inclusions for those areas of the sites which do not yet have planning permission.

‘There shall be no connection to the public sewer from the allocated sites in Forton and Hollins Lane other than in accordance with a timetable to be agreed with UUW which ensures appropriate wastewater infrastructure is in place to meet the needs of the development.’

‘The masterplanning exercise shall set out a settlement wide strategy for drainage infrastructure for the allocated sites to ensure a coordinated approach between the allocations.’

8) Conclusion

In conclusion, the key points from this statement are set out below.

1. The growth proposed within the settlements of Forton and Hollins Lane is very large compared with the size of the settlements.
2. UUW would prefer the allocations to be more proportionate to the size of the settlements. This helps to manage the impact on water and wastewater infrastructure.

3. Notwithstanding this preference, UUW acknowledges its statutory obligations if WBC is minded to progress with the proposed approach in Forton and Hollins Lane. UUW has therefore expressed a preference for policy to state that unless otherwise agreed with the local planning authority in liaison with UUW, there shall be no connection to the public sewer from the allocated sites in Forton and Hollins Lane other than in accordance with a timetable to be agreed with UUW which ensures appropriate wastewater infrastructure is in place to meet the needs of the development. This will allow UUW a reasonable opportunity to ensure appropriate infrastructure is in place if the allocations are confirmed.

4. UUW highlights the importance of foul only flows connecting to the public sewer and the management of surface water in a sustainable and coordinated manner.