

Arun-Chichester Neighbourhood Planning Network

Proceedings of the seminar

“Dependency of new housing development on sewerage infrastructure”

Held on 24th November 2023, hosted by Middleton-on-Sea Parish Council

Executive Summary

In Arun District, the Local Plan is deemed “out of date” due to the housing supply being well below the five-year requirement and presently Chichester District does not have a Local Plan. In consequence, any planning application to build new homes is presumed at the onset to be sustainable, leading to a rash of speculative development applications. This is despite very significant deficiencies in the infrastructure needed to support such development and it being obvious to local councils that many new developments cannot be regarded as sustainable.

Paragraph 11 of the National Planning Policy Framework (NPPF) allows an application to be refused if it can be demonstrated that it will have an adverse environmental impact. However, this must be assessed within the total policy framework of the NPPF and planning inspectors have frequently over-ruled environmental objections at appeal, despite overwhelming evidence of local problems such as: frequent sewage flooding of roads, green spaces and peoples’ homes, regular spills of storm sewage overflows, and regular breaches of environmental regulations (Water Framework Directive regulations 2017 and Bathing Waters regulations 2013). Numerous examples of these environmental problems were described during the Seminar.

Southern Water stated that it was obliged, under Section 106 of the Water Industry Act 1991, to connect any new development to its sewerage network, given limited notice, regardless of sewerage capacity, although it may defer connection if there is insufficient treatment capacity at the wastewater treatment works (WTW). Southern Water collaborates with the planning authorities and the developers in an attempt to identify investment needs, but will only make investments if the planning of development has certainty. The reality is that development is rarely certain due to objections, appeals and changes in market conditions. In consequence, there had tended to be a trend whereby improvements to infrastructure lagged behind development.

There was strong support for the use of “Grampion rules” in the planning process, whereby planning policies require necessary improvements in infrastructure before development. There are an increasing number of examples of the use of Grampion rules.

1. Introduction

Cllr. Shirley Haywood, Chairman of Middleton-on-Sea Parish Council, welcomed the delegates. The seminar was aimed at local Parish and Town Councils with neighbourhood development planning in mind. Its intention was to review the extent of sewerage infrastructure deficiencies in the Arun-Chichester area, to find out how these deficiencies impacted on the planning of sustainable housing developments and to examine the scope for mitigation in the foreseeable future. It was intended that guidance for local councils would be produced in the light of the seminar. Copies of the presentation slides can be found on the website of Middleton-on-Sea Parish Council.

2. A district council perspective presented by Kevin Owen, Principal Planning Officer, Arun District Council (ADC).

The updating of ADC's Local Plan has commenced with an initial phase, a "Direction of Travel" that is currently seeking views on a wide scope of issues and options. The information gained through public consultation will help to shape the new Local Plan from an early stage. Issues and options will be determined by February 2024 in a Direction of Travel document, with scoping of the new plan by summer 2025, examination by autumn 2026 and adoption by winter 2026. The Direction of Travel document will have ten themes, based on ADC's Visions and Objectives, each with key challenges and issues, policy options and what Neighbourhood Development Plans can and cannot do.

Themes include:

Climate change

- Ensuring that communities are built that are resilient to the extremes of climate change, including flood risks in all forms;
- Delivering net zero carbon and emissions targets;
- Ensuring waste-water and water supply infrastructure meets the needs of development and the environment.

Environment Life Support Network

- Making the best use of existing previously developed land before green-field;
- Delivering biodiversity net gain;
- Expanding biodiversity opportunity areas, including connectivity via "corridors" and "stepping stones".

Homes in the Right Places

- Ensuring realistic housing targets at a level that is supported by infrastructure capacity;
- Whether to grow existing communities and/or new settlements;
- Specific housing distribution for Parish and Town Councils.

Infrastructure to support our Needs

- Set out supporting policies which require strategic and local scale infrastructure to support the scale of new growth.

The next steps are engagement workshops with stakeholders and infrastructure providers (December 2023), refinement of the Direction of Travel and public consultation (February 2024).

3. The Southern Water perspective presented by Nicholas Davies.

Water companies have an obligation to serve new homes under Section 94 of the Water Industry Act 1991. Under Section 106 of this Act, developers have a right for their development to be connected to the sewerage network. This means that water companies cannot refuse new connections nor object to new developments.

Although Southern Water encourages consultation, they are not statutory consultees on planning applications. They work with planning authorities and developers in order to:

- Assess the impact of planning proposals and applications on their network to identify investment needs;
- Provide input to Local and Neighbourhood Plans;
- Develop collaborative solutions.

Southern Water actively participates in the preparation of both Local and Neighbourhood Plans, as statutory consultees, and strongly support sustainable drainage methods and directing surface water away from foul sewers.

Neither Local nor Neighbourhood Plans set the precise timing of development. Southern Water needs planning certainty to inform growth related investment through the 5-year business planning process.

For local infrastructure, when consulted, Southern Water will request any relevant planning conditions, if for example existing sewerage network capacity is insufficient to serve the proposed development. If planning permission is given without drainage conditions, they cannot subsequently refuse a connection on the grounds of inadequate capacity.

For strategic infrastructure, water companies use Dry Weather Flows (DWF) to understand the increased load that new homes would place on the treatment processes at a Waste Water Treatment Works (WTW). Southern Water only comments on wastewater treatment when there is insufficient capacity within the Environment Agency's DWF permit to accommodate future development.

4. OFWAT's investment priorities by Helen Clay-Chapman, Water Industry Consultant, presented by Cllr Dr Colin Hayes as Helen was unable to attend due to family commitments.

The principal drivers for privatisation of the water industry in 1989 had been the European Directives on bathing water (1976) and drinking water (1980) and the massive costs required to achieve compliance. This was reinforced by the requirements of the Directive on urban wastewater treatment in 1991. The framework for the regulation of water and environmental quality differed across the UK but for England extended to the World Health Organization, the European Union, the Government and two regulatory bodies, the Environment Agency and the Drinking Water Inspectorate; more recently, since Brexit, the Office for Environmental Protection had taken over the role of the European Union. For England the financial and consumer regulatory framework extended to the Office for Water (Ofwat) and the Consumer Council for Water.

The asset management planning (AMP) process for water companies, regulated by Ofwat, consisted of five-year planning cycles, commencing in 1990. The first three cycles (AMP 1 to 3) addressed the lack of investment from the past, as did AMP4 together with the introduction of the willingness of customers to pay. AMP 5 to 7 looked to the future introducing mechanisms for competition and long-term resilience. Over these planning cycles no emphasis has been placed on sewerage. The preparation of the next cycle (AMP8) has commenced with business plan submissions in October 2023, leading to draft determinations in May/June 2024 and final determination in December 2024 for implementation from April 2025. The emphasis of AMP8 is customer expectation, affordability, the longer term and dealing with climate change.

Whereas privatisation of the water companies had undoubtedly been very successful in relation to the quality of drinking water, waste-water and environmental quality had lagged behind, with little emphasis on combined sewer overflows. In June 2022, the Office for Environmental Protection (OEP) had launched an investigation into the regulation of combined sewer overflows. On 12th September 2023, the OEP published its findings:

- "We think there may have been misinterpretations of some key points of law. The core of the issue is that we interpret the law to mean that untreated sewage discharges should generally be allowed only in exceptional circumstances, such as during unusually heavy rainfall, it appears that the public authorities may have interpreted the law differently, permitting such discharges to occur more often."
- "This then has consequences for the regulatory activity that follows. The guidance provided by Government to regulators, and the permitting regime they put in place for the water companies, possibly allow untreated sewage discharges to occur more regularly than intended by the law without risk of sanction."

- These issues relate to the Environment Agency, to Ofwat and to Defra.

It can be expected that the discharge of untreated sewage from sewerage networks will be considerably curtailed in the near future.

5. Tackling sewerage infrastructure issues through a neighbourhood plan: presented by Alison Eardley, Neighbourhood Planning Consultant.

All water service companies have a legal obligation under Section 94 of the Water Industry Act 1991 to allow developers the right to connect to a public sewer. Paragraph 20 of the National Planning Policy Framework states that strategic policies should make provision for infrastructure, including waste management, water supply, wastewater, flood risk and coastal change management. National Planning Policy Guidance states that for areas with inadequate wastewater infrastructure “If there are concerns arising from a planning application about the capacity of wastewater infrastructure, applicants will be asked to provide information about how the proposed development will be drained and wastewater dealt with”

Not-with-standing the developer’s legal right to connect to the sewerage network, the water service company could request conditions on the granting of planning permission. This would enable the water service company to agree with the developer the drainage strategy, the preferred point of connection, allow for existing capacity to be considered and upgrading work to be programmed. Such an approach allows the legal right to connect to be sensibly managed prior to implementation.

This might be achieved through a “Grampion condition”, a special type of condition that prohibits development authorised by planning permission (or other aspects linked to the planning permission) **until** a specified action has been taken, such as the provision of supporting infrastructure. Examples of the use of Grampion conditions to control development are:

- Old Windsor Parish Council’s Neighbourhood Plan to restrict development in Old Windsor **until** such time as issues with the capacity of the sewage treatment works have been resolved;
- Rye Parish Council’s Neighbourhood Plan (Rother District) which restricts development site allocations **until** such time as flood risk mitigation measures have been taken and improvements to sewerage have been made in order to cope with additional flows;
- Pembury Parish Council’s Neighbourhood Plan (Kent) that states that planning proposals will not be supported **unless** there is sufficient capacity in the local sewerage system;
- Peamarsh Parish Council’s Neighbourhood Plan (Rother District) in which the proposed policy 12 on sewage system improvement requires: “Development proposals which have undergone an independent capacity check of the parish sewer system by a qualified professional will be supported **provided** that any improvements required are operational before construction is commenced.

This is essential due to the current identified problems of regular foul water overflow and pollution incidents in the Neighbourhood Area.

6. CASE STUDY

Sewerage and development in Middleton-on-Sea: presented by Cllr. Dr Colin Hayes, Chairman of the NDP Coordination Group, Middleton-on-Sea Parish Council

Middleton-on-Sea Parish is located along the coast between Bognor Regis and Littlehampton, with a population of just under 5000 people. The southern half is extensively developed with houses, bungalows, flats and a small number of commercial businesses. The northern half lies outside the Built up Area Boundary and comprises mainly good quality agricultural land (Grade 2), deciduous woodland (Worm's Wood) and a large recreational green space (Larkfield).

About 85% of Middleton's sewage drains and is pumped to Lidsey Wastewater Treatment Works (WTW); the remainder drains and is pumped to Ford WTW. For Lidsey WTW, Southern Water's Baseline Risk and Vulnerability Assessment (BRAVA) indicates for 2020 moderately high risks for "sewer flooding", "hydraulic overload", "dry weather flow compliance" and "ecological status", and very high risks for "pollution risk", "storm overflows", "nutrient neutrality" and "bathing waters". For 2050, very high risks are indicated for "storm overflows", hydraulic overload", "dry weather flow compliance" and "nutrient neutrality". An associated planned investment profile shows limited investment to resolve these issues, most of which is shown as medium term (2030 to 2040 in AMP 9 & 10) or long term (2040 to 2050 in AMP 11 & 12). Not only are some very high risks expected to remain beyond 2050 (that's 27 years from now!) but some risks are expected to get worse. These risks and vulnerabilities stand in the way of new housing development for the foreseeable future.

Most of Middleton's sewage is collected by a 300 mm sewer that runs north from Elmer then west before pumping north to Lidsey WTW. Sewage flooding occurs regularly during heavy rainfall at numerous locations, particularly at four manholes which are located closely to the network of drainage ditches and culverts that run northwards towards the Ryebank Rife, a designated water body under the Water Framework Directive (WFD) regulations. This Rife is classified as having only a "moderate" ecological and "moderate" physico-chemical quality, with "bad" quality for dissolved oxygen, a contributory factor being sewage flooding. Treated sewage from Lidsey WTW discharges to Lidsey Rife which is classified under the WFD regulations as having only a "moderate" ecological and "moderate" physico-chemical quality, with "bad" quality for dissolved oxygen and "poor" quality for phosphate. The Lidsey Rife also impacts adversely on two designated bathing waters (Bognor East and Felpham) and on the designated habitat Solent & Dorset Coast, relevant to nutrient neutrality. More sewage from any new housing development would only make these existing problems worse, contrary to the WFD regulations which prohibit deterioration in water quality.

The obligation for Southern Water to connect a development to the public sewer, under Section 94 of the Water Industry Act 1991, is based to some extent on the capacity of the WTW, as measured by dry weather flow (DWF). From correspondence with the Parish Council, it was apparent that Southern Water had used the average DWF measured over a 3-year period (2017-2019) to conclude that there was some spare capacity at Lidsey WTW. DWF is strongly influenced by the population served and the extent of infiltration from groundwater, both of which vary seasonally. It would therefore be more accurate to measure DWF on a quarterly basis to take account of seasonal variation. It was considered that Southern Water's statement that Lidsey WTW had spare capacity was most likely an illusion and this matter needed to be clarified.

Additional to the evidence from sewage flooding in the Lidsey WTW catchment, it was noted that spills from the storm sewage overflow to Lidsey Rife had occurred for up to 30% of the year, indicating very substantial hydraulic overload. More sewage from any new housing development would clearly only make these existing problems worse. Southern Water's recently announced "Clean Rivers and Seas Plan", valued at £1.5 bn subject to Ofwat approval, and included plans to construct 3.27 hectares of wetlands at Lidsey WTW and to reline 15.71 km of sewers to tackle overflows, both by 2030. No actions had been proposed to tackle the sewage overflows in Middleton as they had been considered to be "not in scope", which was strongly challenged.

It is clear, at least in the short term to 2030, that a moratorium on new house building should be implemented until such time as the sewerage problems have been resolved, consistent with the views expressed by Arun District Council in a letter (dated 18th August 2023) to Michael Gove MP.

7. CASE STUDY

Challenges of further housing development on the Manhood Peninsula:
presented by Carey Mackinnon, Management Consultant

In terms of the Chichester District planning footprint, 69% of its area is in the South Downs National Park, 9.5% in the Chichester Harbour AONB, 1% in the Pagham Harbour Nature Reserve and 0.5% in the Medmerry Nature Reserve. Therefore 80% of the area lies in protected areas, constraining new housing development to only 20% of the District.

Due to climate change, rising sea levels will increasingly threaten the low-lying areas and communities on the Peninsula. Indeed, Chichester District Council's (CDC) Strategic Flood Risk Assessment (December 2022) has already been cited in two recent planning refusals. All surface water drainage in East Wittering and Bracklesham is through two pipes that discharge to the sea and both have carried raw sewage at one time or another; problems include blockage by shingle and tidal locking.

Sewage from most of the Manhood Peninsula gravitates or is pumped to the Siddlesham Wastewater Treatment Works (WTW) for treatment, with an outfall for

treated effluent to discharge to Pagham Harbour. The WTW is already overwhelmed during periods of moderate to heavy rainfall and the only solution for the foreseeable future is to relieve the pressure by using tankers. The situation can expect to worsen due to the impacts of climate change; indeed, the WTW itself will be flooded by rising seawater levels way before the houses that it serves. Clearly, more houses will produce more sewage and worsen an already unacceptable situation.

What overdevelopment really looks like can be illustrated by the following for the Manhood Peninsula:

- 408 houses built in the last 8 years;
- 207 new houses approved but not yet built;
- 387 new houses refused planning permission but appeals expected;
- 164 new houses for which appeals or applications are in progress.
- This total of 1166 new houses extends to an area only 2½ miles across and several hundred more appear likely via CDC's HELAA system.

It is beyond comprehension how sewage from this number of new houses can be handled without significant adverse environmental impact, consistent with the concerns raised in a Joint Letter, dated 1st October 2020, sent to the Housing Minister that stated that the current housing policy was not sustainable (Council signatories: Adur & Worthing, Arun, Chichester, Crawley, Horsham, Mid Sussex, West Sussex County).

The strain of new housing on infrastructure also extends to the capacity of medical centres, schools and the road network. Its environmental impact extends to loss of good quality agricultural land, loss or disruption of habitats and reduced biodiversity.

It can be concluded that:

- No major developments should start until appropriate infrastructure is actually in place (as is already the case in Germany and France);
- Impossible demands on local authorities should be removed, i.e. no quotas;
- The Water Act 1991, which requires water service companies to connect a development to their sewers, should be amended to make refusal easier;
- Parish and Town Councils should be encouraged to keep their Neighbourhood Development Plans up to date, so that their planning powers are more effective;
- A Select Committee enquiry should be held to ensure that Members of Parliament are made properly aware of the "real world" constraints upon new housing.

8. Round table discussion:

Cllr David Huntley (Pagham Parish Council) agreed that infrastructure was needed before development, stated that government targets should be removed and that local councils needed “more teeth”. He questioned why are we permitting development when we already know that the necessary infrastructure is not in place?

Cllr Jim Ellis (Donnington Parish Council). He stated that there is already a moratorium on development in the area that feeds Chichester Wastewater Treatment Works. He then asked if new entrants to the water service sector might provide a solution to the lack of infrastructure. Nicholas Davies (Southern Water) replied that any new water service provider could accept sewage from a new development and treat it, but would be subject to Environment Agency controls just like Southern Water.

Carey Mackinnon asked if tankering away sewage from Siddlesham WTW, during periods of heavy rainfall, was happening elsewhere. Nicholas Davies (Southern Water) replied that it was.

Cllr David Miranda (Clymping Parish Council) expressed concern that 300 houses (strategic allocation in the Local Plan) were planned but without consideration of the infrastructure needed, particularly as surface water flooding problems were well known. Adequate drainage was a condition of planning approval but no plans had yet been submitted by the developer. Planning permission was currently subject to an appeal by the developer.

Cllr Dr Mario Trabucco (Aldingbourne Parish Council) asked that given infrastructure deficiencies are well documented in the area, is this sufficient to refuse development under Paragraph 11 of the National Planning Policy Framework (NPPF)? Kevin Owen (Arun District Council) stated that the presumption of sustainable development in favour of the developer must still take account of all the NPPF policies taken together; he stated that the issue of the connectivity of developments (to deficient infrastructure) had not been very successful when it went to appeal; however, he thought that there may be scope to the Grampian rules approach and mentioned that Arun District Council’s Local Plan was currently under review.

Cllr Richard Rase (Chichester District Council) stated that Paragraph 11d of the NPPF, when used to refuse planning permission because of sewerage deficiencies had been overturned by Inspectors; he asked what happened if there was no capacity to accept new sewer connections? Nicholas Davies (Southern Water) replied that they would need to talk to the Environment Agency (EA) and/or expand the WTW and that the EA might review the permit conditions; he again highlighted the problems caused by surface water.

Alison Eardley drew attention to forthcoming National Development Management Policies that would include the impacts of climate change; there will be consultation and thought it important that local councils made their views known.

Cllr David Maclean (North Mundham Parish Council) said that the infrastructure in his area was overwhelmed and that sewage flooding had been a problem for over 20 years. He was concerned that it was difficult to get Southern Water to acknowledge these sewerage deficiencies and had even briefed Gillian Keegan (MP for Chichester) that there was no record of any such problems! Nicholas Davies (Southern Water) responded by saying that any incidents should be reported and would be put on a Risk Register.

Cllr Anita Lawrence (Arun District Council) said that we needed a collective approach and needed to take these matters to Government; she very much supported the seminar as it brought numerous local councils together on shared problems.

Invited by the Chairman to draw proceedings to a close, Cllr Dr Colin Hayes thanked everyone for coming and believed that we would all gain a stronger voice by working together. He reminded participants that it was intended to publish proceedings, subject to checking factual accuracy; it was also intended to prepare a brief Guide to Investigating Sewerage Infrastructure for NDP evidence base purposes and an invitation was made for anyone interested in being involved to get in touch with Middleton's Parish Clerk (Joe Lake) at mospc@btconnect.com