

Gladman Developments

UTILITY LAW SOLUTIONS

**Proposed Development off Linglongs Road,
Whaley Bridge - Foul Drainage Strategy**

February 2014

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A. Executive Summary

Utility Law Solutions (ULS) are experts in water and sewerage law and its application in relation to new development sites. ULS has been appointed by Gladman Developments to provide advice in relation to foul drainage matters for its proposed development off Linglongs Road, Whaley Bridge.

It is currently proposed that the subject site will be developed to comprise of up to 107 residential units. All foul flows from the development will be connected to the existing public sewerage network which is owned and operated by United Utilities. Information obtained from United Utilities in relation to the proposed development has been analysed and incorporated into the proposed foul drainage strategy outlined in this report.

It is the firm opinion of ULS that sewerage or waste water treatment capacity for this development or any other is not a material planning consideration. There is a separate statutory regime in place which adequately addresses the matter and application of planning policy which conflicts with this regime is unreasonable and may in some cases be unlawful. It is also the case that should this proposed development be granted outline planning permission, United Utilities has sufficient time, 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.

United Utilities has a statutory duty to ensure that the contents of its sewers are emptied and properly treated and a developer or owner has an absolute statutory right to connect to a public foul sewer.

United Utilities is also funded to ensure that improvements are made to its sewerage network in order to comply with its statutory duty to “provide, improve and extend” its network and it would therefore be unreasonable to compel the developer of this site to provide financial contributions or to unnecessarily delay the start or progress of the development once full planning permission has been granted.

Notice of the intended planning application associated with this development has been given to United Utilities. ULS has set out the position on foul drainage from this proposed development and the need for United Utilities to accommodate the foul flows should planning permission be granted. A copy of the correspondence is included at Appendix 3.

This report will first set out the legislative framework and funding mechanisms in relation to foul drainage connections from new developments and its implications and then outline the options available to effectually drain the proposed development.

B. Legislative Framework

The Water Industry Act 1991 (the Act) provides a full legislative framework which incorporates provisions to ensure that new developments can be effectually drained. The Act also contains sufficient safeguards to ensure that flows resulting from new development do not cause detriment to the existing public sewerage networks by imposing a duty on sewerage undertakers to take the necessary action to carry out works to accommodate such 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.

The relevant sections of the Act which confirm the above statements are detailed below:

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 Act 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 106 (1) is set out in full below:

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.

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).

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

Under section 94 (1) of the Act, 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 Act 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 106 (1) is set out in full below:

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.

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 their right to connect under section 106(1). In reality, a sewerage undertaker has sufficient certainty that a development will be proceeding on the grant of planning permission (outline or full) and should consider any necessary actions to comply with their 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 such time as any issues with their systems have been resolved. Given the rights and duties under section 106 and 94 of the Act, it would not however be appropriate to expect a developer to pay for any additional works. Section 112 of the Act 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)). Sections 112 (1) and (6) are set out in full below:

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.

(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.

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.

Legislative Interaction with the Planning Regime

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 conditions be imposed which are intended to

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 this: as a matter of law, the Act 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 Act 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). Why then should planning policy be applied so as to relieve the undertakers of that duty and negate the rights of owners and occupiers? To do so conflicts with primary legislation which already protects both new developments and existing property owners and this is both unreasonable and potentially unlawful.

In our experience, planning authorities often refuse or condition developments in relation to foul drainage on the advice of sewerage undertakers, the result is that one commercial operator (the sewerage undertaker) gets another (the developer) to meet the cost of providing the infrastructure the sewerage undertaker has a statutory duty to provide. If the cost 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 the case that sewerage undertakers are funded to enable them to carry out these duties. This is discussed further below.

In addition 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. 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. It is recognised however that it may be desirable for a planning authority to impose a condition requiring a scheme to be put in place for the long term management or adoption of onsite sewers.

Funding Regime for Sewerage Undertakers

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

1. General Sewerage Charge - An annual charge levied by the sewerage undertaker whilst ever a property remains connected to the public sewerage system.

2. Sewerage Infrastructure Charges - all new developments which connect to a sewerage undertakers' sewers for the first time have a charge levied upon them by the relevant sewerage undertaker. 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.

Funding for improvements to the sewerage network and the sewage treatment activity, including improvement works required to accommodate new development caused by the way that such developments impact on a particular network or sewage treatment works, comes from 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. 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

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. The water industry regulator, Ofwat, has issued guidance to this effect. It is also important to note that while for all developments, infrastructure charges are levied for properties constructed, 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.

On this specific development, the addition of 107 new customer households will provide additional annual income to United Utilities. The current average sewerage charge in United Utilities area is £195.00 per property giving United Utilities an annual income of £20,865.00.

Each new dwelling constructed on this development will also be subject to a sewerage infrastructure charge (current rate £338.06 per property). This will generate a further one off payment to United Utilities of £36,172.42.

There is no statutory mechanism in the Water Industry Act 1991 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 it is inappropriate to seek to any further financial contributions from developers through use of the planning system, as sewerage undertakers already have an adequate funding scheme. 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 and in direct conflict with the water industry's governing legislation.

C. General Sewage Treatment Matters and Environment Agency Consent

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 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 swift 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 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 as in this case, 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 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.

D. Drainage Strategy for the Development

There are public foul/combined sewers within the site boundary and additional public foul/combined sewers are available in Linglongs Lane. United Utilities has confirmed that connection to either of these public sewers is acceptable and no concerns regarding capacity to accept foul flows have been raised.

The locations of potential sewer connection points are indicated in Appendix 1 together with the site location plan set out in Appendix 2. Foul flows from the development could be discharged to either of the local public sewers, split between them as required by the final, detailed design for the development.

In order for foul water from the proposed development to be effectually drained, a newly constructed 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 and will be offered for adoption to United Utilities 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.

Although no concerns regarding capacity of the public sewerage network have been raised by United Utilities, as indicated above, the responsibilities for any upgrades to the sewerage and sewage treatment networks is a matter for United Utilities to manage in line with its statutory duties and therefore not a planning matter, but in order to give reassurance to both United Utilities and the Planning Authority, timescales for this development can be considered to evidence that this matter is not an issue in practical terms

As Gladman Developments can only control matters relating to its own planning application, only the potential impact of the proposed 107 units can be considered. As stated above, it is a matter for United Utilities to manage its consents with the EA and assess, plan and implement any necessary improvements works at the appropriate times. United Utilities must also manage its public sewerage network as it sees fit and cater for growth in its operating area.

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

1. Upon receipt of a valid planning approval, Gladman Developments will begin to market the site in the 3rd/4th quarter of 2014
2. Sale of the site is likely to be completed in the 2nd/3rd quarter of 2015.
3. The developer will then complete detailed designs for the site and is likely to make a reserved matters application in the 4th quarter of 2015
4. Determination of reserved matters may take approximately 3-6 months, i.e. early to mid-2016.
5. Initial on-site works could therefore commence in mid to late 2016
6. Initial occupations (excluding show homes) may commence towards the end of the first year of development in 2017.
7. Development will continue over a 3 to 4 year period with sales/occupations at no more than 30-40 dwellings per annum.
8. Site completion estimated in 2019/2020

In summary, the foul drainage strategy is to connect to existing local public sewers with improvement works (if required) that United Utilities would fund as part of its responsibility to manage the public sewerage network.

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 2017. This allows more than two years for United Utilities to evaluate the Developments potential impact on its sewerage network and sewage treatment works and if necessary, carry out any improvements which may be required to ensure such flows can be accommodated in the 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 3-4 years.

The above timescales afford sufficient time to United Utilities to improve its sewerage network and sewage treatment works if required to accommodate this development. Given the fact that United Utilities have 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 clear provisions set out in the Water Industry Act 1991.

E. Summary

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.

In summary:

- The developer has a right to connect to the public sewerage network at a point of its choosing and United Utilities has a duty to carry out any works necessary to accommodate any resulting foul flows (s106 and s94 of the Act).
- If United Utilities require 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, they can compel the developer (through s112 of the Act) to carry out the additional works to achieve this and reimburse any costs over and above those that would have been incurred.
- United Utilities has sufficient time following the grant of outline planning permission 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 drainage matters relating to this development can be satisfactorily dealt with without any requirement for a planning condition which would duplicate rights and duties under the Water Industry Act 1991.

We have highlighted above 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 on sewerage capacity or sewage treatment grounds and that drainage conditions are not required. Matters pertaining to drainage and sewage treatment are fully addressed by water industry legislation. In addition, it is illogical to refuse to grant planning permission for developments on the grounds that no sewerage or sewage treatment improvement works are planned for a particular area. 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. 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 and development generally would grind to a halt.

The grant of planning permission for the development will give United Utilities sufficient certainty that it will go ahead and its planning to accommodate the foul flows can then commence.

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Utility Law Solutions

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:–

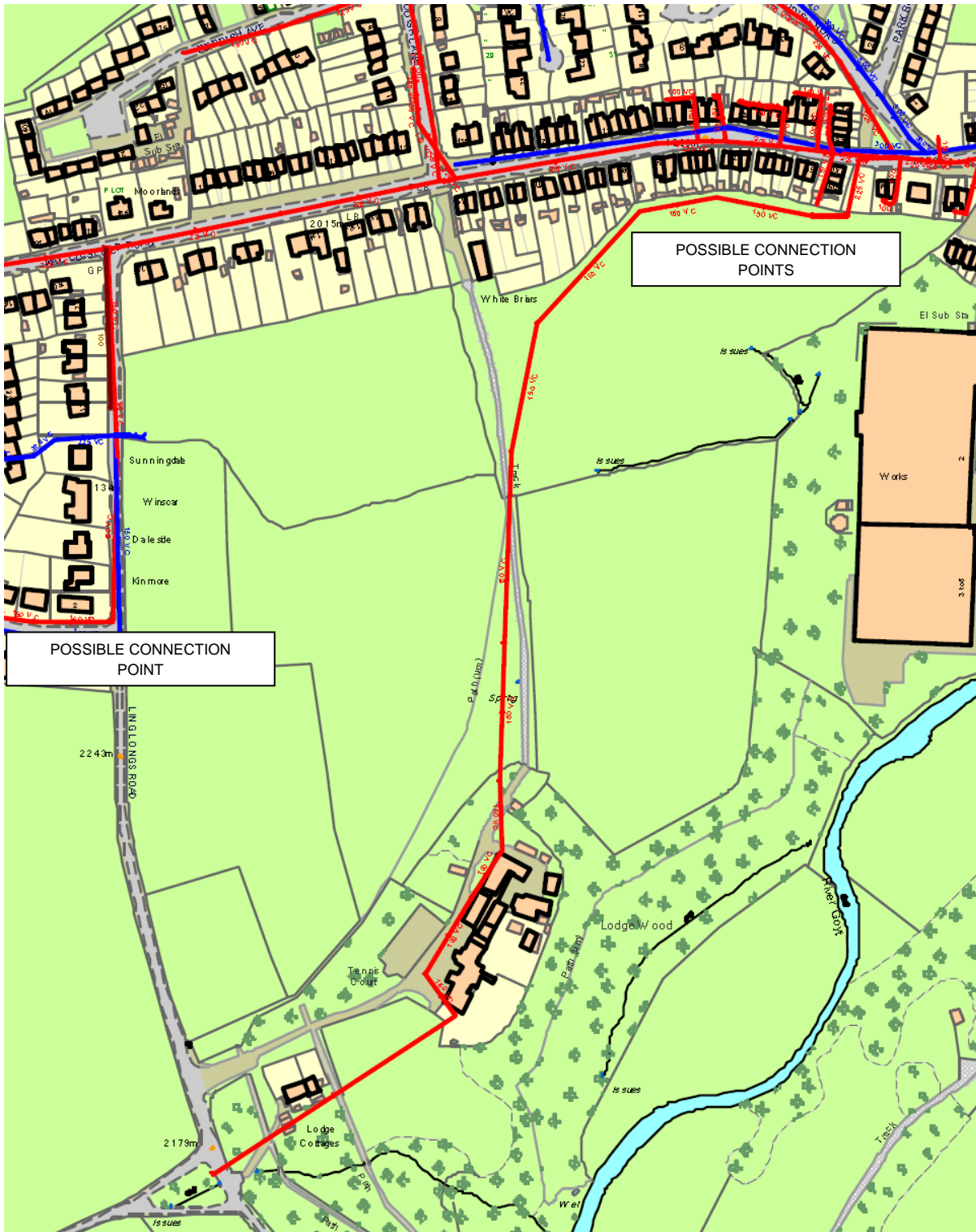
- Advice on the effects of the Water Industry Act 1991 and related legislation
- Obligations of sewerage undertakers in relation to the section 94 duty
- Formulation of policies and procedures in relation to the connection of infrastructure to new developments including resolution of development related 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.

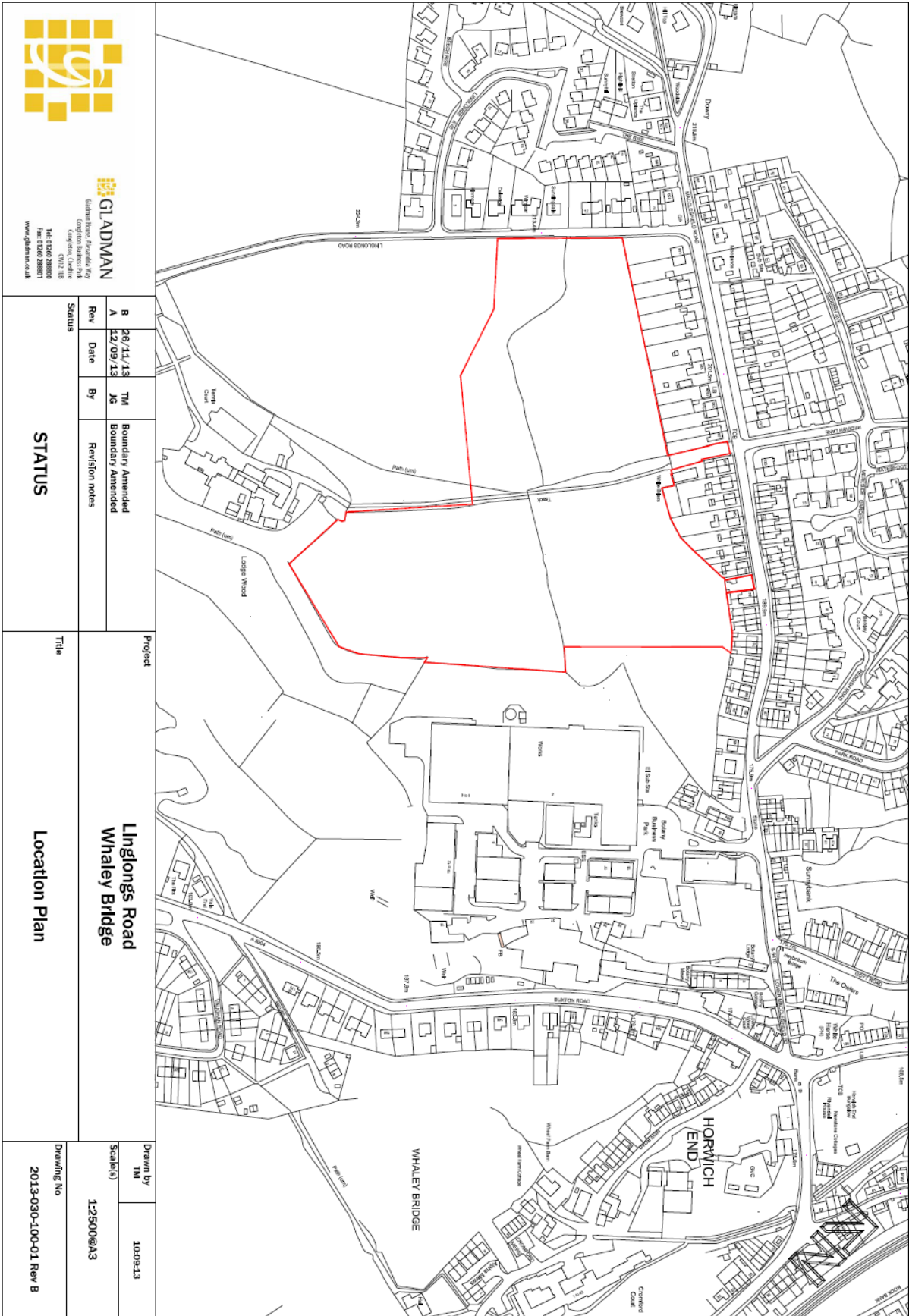
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Appendix 1



Appendix 2




GI ADMAN
 Geomatics, Planning & Design
 141-143A, 145-147, 149-151, 153-155, 157-159, 161-163, 165-167, 169-171, 173-175, 177-179, 181-183, 185-187, 189-191, 193-195, 197-199, 201-203, 205-207, 209-211, 213-215, 217-219, 221-223, 225-227, 229-231, 233-235, 237-239, 241-243, 245-247, 249-251, 253-255, 257-259, 261-263, 265-267, 269-271, 273-275, 277-279, 281-283, 285-287, 289-291, 293-295, 297-299, 301-303, 305-307, 309-311, 313-315, 317-319, 321-323, 325-327, 329-331, 333-335, 337-339, 341-343, 345-347, 349-351, 353-355, 357-359, 361-363, 365-367, 369-371, 373-375, 377-379, 381-383, 385-387, 389-391, 393-395, 397-399, 401-403, 405-407, 409-411, 413-415, 417-419, 421-423, 425-427, 429-431, 433-435, 437-439, 441-443, 445-447, 449-451, 453-455, 457-459, 461-463, 465-467, 469-471, 473-475, 477-479, 481-483, 485-487, 489-491, 493-495, 497-499, 501-503, 505-507, 509-511, 513-515, 517-519, 521-523, 525-527, 529-531, 533-535, 537-539, 541-543, 545-547, 549-551, 553-555, 557-559, 561-563, 565-567, 569-571, 573-575, 577-579, 581-583, 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1385-1387, 1389-1391, 1393-1395, 1397-1399, 1401-1403, 1405-1407, 1409-1411, 1413-1415, 1417-1419, 1421-1423, 1425-1427, 1429-1431, 1433-1435, 1437-1439, 1441-1443, 1445-1447, 1449-1451, 1453-1455, 1457-1459, 1461-1463, 1465-1467, 1469-1471, 1473-1475, 1477-1479, 1481-1483, 1485-1487, 1489-1491, 1493-1495, 1497-1499, 1501-1503, 1505-1507, 1509-1511, 1513-1515, 1517-1519, 1521-1523, 1525-1527, 1529-1531, 1533-1535, 1537-1539, 1541-1543, 1545-1547, 1549-1551, 1553-1555, 1557-1559, 1561-1563, 1565-1567, 1569-1571, 1573-1575, 1577-1579, 1581-1583, 1585-1587, 1589-1591, 1593-1595, 1597-1599, 1601-1603, 1605-1607, 1609-1611, 1613-1615, 1617-1619, 1621-1623, 1625-1627, 1629-1631, 1633-1635, 1637-1639, 1641-1643, 1645-1647, 1649-1651, 1653-1655, 1657-1659, 1661-1663, 1665-1667, 1669-1671, 1673-1675, 1677-1679, 1681-1683, 1685-1687, 1689-1691, 1693-1695, 1697-1699, 1701-1703, 1705-1707, 1709-1711, 1713-1715, 1717-1719, 1721-1723, 1725-1727, 1729-1731, 1733-1735, 1737-1739, 1741-1743, 1745-1747, 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4661-4663, 4665-4667, 4669-4671, 4673-4675, 4677-4679, 4681-4683, 4685-4687, 4689-4691, 4693-46

Appendix 3

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19th February 2014

Dear Mr Colman

Re: Gladman Developments - Proposed Development off Linglongs Road, Whaley Bridge

Utility Law Solutions (ULS) works closely with Gladman Developments on all of its sites and has been instructed to make contact with you to set out foul drainage matters relating to its proposed development at Linglongs Road, Whaley Bridge which it is intended will be subject of a planning application by the end of this month.

David Gladman recently wrote to Steve Mogford of United Utilities setting out his opinions on foul drainage matters for new developments proposed by his company, along with his thoughts on the interaction of sewerage undertakers with planning authorities. A copy of David's letter is enclosed for your information.

In light of the matters covered in David's letter ULS has been asked to make contact with United Utilities to set out the nature and scale of this proposed development in order that its effect on existing sewerage networks and sewage treatment facilities can be fully assessed at the earliest opportunity. Gladman Developments do not intend to make any developer enquiries or commission hydraulic modelling assessments on any of its future sites as it is considered a matter for the relevant sewerage undertaker to carry out its own assessments and where necessary upgrade its sewerage and sewage treatment systems. The reason for this decision is set out in more detail below.

The principal purpose of this letter is to enable your company to make any necessary changes or improvements to the public sewerage and sewage treatment systems

before new foul flows from this development start to be generated which will be over two years from this point in time.

It is a matter for United Utilities to manage the operation of its sewerage and sewage treatment systems, indeed it has a statutory duty to do so. United Utilities must be reactive to new developments which satisfy the housing needs of a particular area and assess, plan and implement any improvement works to its systems that it feels necessary to accommodate growth. For example, the potential for new development set out within a local plan is useful to help United Utilities plan any improvements to its network and sewage treatment works where in a particular area there are perceived inadequacies. However, a local plan is subject to change and United Utilities must be reactive to new developments which satisfy the housing needs of a particular area whilst not necessarily being part of the original local plan. It is a wholly unreasonable use of the planning system to attempt to embargo a development or impose restrictive conditions and either prevent the grant of planning permission, or delay the progress of development on sewerage capacity or sewage treatment grounds.

In summary:

- The developer has a right to connect to the public sewerage network at a point of its choosing and United Utilities have a duty to carry out any works necessary to accommodate any resulting foul flows (s106 and s94 of the Water Industry Act 1991).
- If United Utilities require connection at an alternative location to that proposed by the developer, it can compel the developer (through s112 of the Water Industry Act 1991) to carry out the additional works to achieve this and reimburse any costs over and above those that would have been incurred for a connection at the developers chosen point of connection.
- Foul drainage matters relating to this development can be satisfactorily dealt with without any requirement for a planning condition which would duplicate or possibly conflict with rights and duties under the Water Industry Act 1991.
- The foul drainage strategy is to connect to existing local public sewers with improvement works (if required) that United Utilities would fund as part of its responsibility to manage the public sewerage network.
- United Utilities has sufficient time following the grant of outline planning permission to fully assess the impact of this development on its sewerage network and sewage 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.
- The level of foul flows from this small development, particularly when referenced against the full catchment of the local sewerage network will have an insignificant effect on both sewerage capacity and available sewage

treatment facilities. This along with the overall foul drainage strategy is explored in more detail below.

The grant of planning permission for the development will give United Utilities sufficient certainty that it will go ahead and its planning to accommodate the foul flows can then commence.

Detailed Analysis of Drainage from the Development

There are public foul/combined sewers within the site boundary and additional public foul/combined sewers are available in Linglongs Lane. United Utilities has confirmed that connection to either of these public sewers is acceptable and no concerns regarding capacity to accept foul flows have been raised. A copy of the location plan for the proposed development is enclosed.

In order for foul water from the proposed development to be effectually drained, a newly constructed 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 and will be offered for adoption to United Utilities under an agreement pursuant to Section 104 of the Water Industry Act 1991.

The proposed development is due to comprise up to 107 units which will produce a final foul flow (once all properties are completed and occupied) of between 0.4 l/s (average) and 2.5 l/s (peak). The calculations for these estimates are set out below:

Peak Flow

Peak flow rates for offsite sewers have in the past generally been held to be the equivalent of an average of 2000 litres per household per day when having regard to roughness, the effects of gravity and natural attenuation. (Reference sources LB Escritt and JB White). In other words the potential peak foul flows from the development, as they discharge into the public sewer will be less than half the peak onsite design flows i.e. no more than 2.5 l/s. However, these “standards” that were established many years ago do not take into account the changes in recent years to the level of water consumption in households which has decreased significantly, particularly in relation to newly built houses where water usage is much more efficient. In terms of water consumption, the development is likely to be designed as a minimum to meet part G of the current building regulation, which requires water fittings to limit household water consumption to 125 litres per person per day.

Average Flow (Water in equals 95% of water out)

- Daily Average Household Consumption (part G building regulations) x occupancy rate less water loss plus infiltration allowance x no. of residential units and converted to litres/second:-
- $125 \times 2.5 \times 95\%$ plus 10% infiltration = 327 litres per household per day. This equates to 0.4 l/s from 107 units.

A flow of between 0.4 l/s and 2.5 l/s is not a significant level of flow and should have minimal, if any impact on the existing public foul sewerage network to which it will be connected.

As indicated above, the responsibilities for any upgrades to the sewerage and sewage treatment networks is a matter for United Utilities to manage in line with its statutory duties and, but in order to give reassurance, timescales for this development can be considered to evidence that this matter is not an issue in practical terms.

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

1. Upon receipt of a valid planning approval, Gladman Developments will begin to market the site in the 3rd/4th quarter of 2014
2. Sale of the site is likely to be completed in the 2nd/3rd quarter of 2015.
3. The developer will then complete detailed designs for the site and is likely to make a reserved matters application in the 4th quarter of 2015
4. Determination of reserved matters may take approximately 3-6 months, i.e. early to mid-2016.
5. Initial on-site works could therefore commence in mid to late 2016
6. Initial occupations (excluding show homes) may commence towards the end of the first year of development in 2017.
7. Development will continue over a 3 to 4 year period with sales/occupations at no more than 30-40 dwellings per annum.
8. Site completion estimated in 2019/2020

In summary, the foul drainage strategy is to connect to existing local public sewers with improvement works (if required) that United Utilities would fund as part of its responsibility to manage the public sewerage network.

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 2017. This allows more than two years for United Utilities to evaluate 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 such flows

can be accommodated in the 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 3-4 years.

However, unlike the majority of sewerage undertakers, I recognise, that in recent times United Utilities has been committed to working with developers to provide sewerage and sewage treatment facilities to suit development timescales. I also understand that United Utilities presently comply with its statutory duties to fund any upgrade works necessary to accommodate new development without seeking additional funding from developers. This correspondence is primarily aimed at giving United Utilities adequate notice of the proposed development and confirming that any attempts to attach a foul drainage condition on any proposed Gladman development will be resisted for the reasons outlined.

We hope that the detail set out in this letter is useful and will allow United Utilities to take all necessary steps at the appropriate time in order that this proposed development and the resultant foul flows can be accommodated in the public sewerage and sewage treatment systems.

ULS will have a significant number of other sites within United Utilities area which we will notify you of as soon as we have sufficient information. Do you wish us to continue to forward details to yourself or is there someone else in United Utilities that you would prefer us to write to?

If you wish to discuss any aspect of this development further, please do not hesitate to contact us using the details set out above.

Yours faithfully

Alex Day
Director
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REF DJG/LMC

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3rd February 2014

Dear Mr Mogford

My Company are currently the largest promoters of strategic housing sites in the UK, with some 200 sites which will have planning applications being submitted in 2014. Each site is typically between 75 and 200 houses and the vast majority adjoin small towns and larger villages.

Over the last couple of years we have consistently encountered difficulties with some sewerage undertakers reporting either potential capacity problems in sewer networks/treatment works and also claiming inability to expand capacity in these due to financial reasons. These representations to the Local Authorities, who consider our planning application, often ask for planning conditions to be added to consents which are intended to either delay development or force the house-builders to contribute financially to expanding the public sewerage system. On occasions the sewerage undertakers ask for possible or alleged capacity shortfalls to be used as a reason to refuse or delay planning consent.

My Company will give sewerage undertakers at least 2 years notice of intended live sewerage flows from new developments by notifying yourselves several months before applying for planning consent that our new homes are coming in due course. (You can assume that they will be built as we are winning some 95% of our applications) It is at least 18 months from gaining an outline consent before a first home is ever occupied, with some 30-40 homes max per year following onwards. This all allows you plenty of time to study your own system and, if necessary, expand its capacity. Incidentally, we nearly always find that once a study has been done the sewerage undertaker concludes that the works will cope with the extra (minimal) flows, rather than it needed new investment!

My Company will not accept sewerage conditions or financial contribution to improve the system when we believe that we have a very simple legal right to expect our sewerage to be moved and appropriately treated by the statutory body.

We understand that the infrastructure charges that you levy on every new home more than covers the costs that you actually expend on increasing (not repairing/maintaining) the capacity of your systems. We suspect that you would prefer for this not to be an area studied in depth as it actually provides for a significant income stream to your annual profits, over and above actual costs expended.

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On a macro level, the current increases in the number of homes being built, and shortly to be built, ramping up to circa 250,000 each year is driven by in part an increase in the UK population, but also in a similar quantum, by a propensity for people to live in a smaller average household size i.e. about half of the extra houses produce no net extra sewerage because they are occupied by people moving out from living with Mum and Dad.

i.e. About half of all extra houses are needed to cope with a smaller average household size, NOT a rising population. This factor affects both the demand on your systems, and your need to spend on additional infrastructure.

It is also worth noting that the sewerage and water rate income to you from say 250,000 new homes/year, after say 10 years of such growth equates to circa £1 Billion p.a. between the UK water companies. Whilst some of this income will be needed to pay for extra costs of supply, it is clear that with such a big fixed cost base, well over half the increase flows straight to profits.

It is not houses that need water and produce sewerage, it is people, and yet the rates are levied per house. As average household size falls (as it has done for several decades) this gives you a financial advantage as your tax base expands faster than your number of human customers.

I have absolutely no interest in becoming a one company lobby group against your charging regime, and if we are left alone to get planning consents which are quickly implementable and without ransom clauses in your favour, then this letter is simply recyclable.

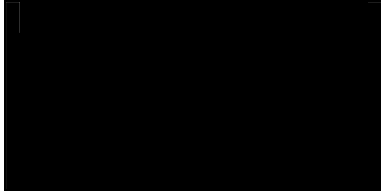
However, if your development teams wish to try and obfuscate my planning applications, ask for planning conditions to be imposed, or require studies or levy charges onto our schemes then my Economists, Consultants and Barristers will leave no argument or fact out of what would become our legal crusade to ensure you do what you are legally obliged to do – Move and treat our sewerage wherever and whenever our customers choose to create it. I do actually prefer a quiet life and am very pragmatic, but unfortunately my legal team are regularly in the High Court or Court of Appeal when large sums of money are at stake and such action therefore becomes necessary.

The repercussions for you may be far reaching and also the publicity of a victory by us would ensure that every other house-builder and developer will also gain from a win of ours. How your Company choose to treat other applicants is of little concern to us, it is how you treat Gladman that is important to ourselves.

Unlike the majority of sewerage undertakers to which this letter is principally aimed, I recognise, that in recent times Severn Trent Water/United Utilities has been committed to working with developers to provide sewerage and sewage treatment facilities to suit development timescales. I also understand that Severn Trent Water/United Utilities presently comply with its statutory duties to fund any upgrade works necessary to accommodate new development without seeking additional funding from developers. This correspondence is primarily aimed at informing Severn Trent Water/United Utilities that any attempts to attach a foul drainage condition on any proposed Gladman development will be resisted for the reasons outlined.

If you wish to meet and discuss this matter, I will be happy to put time aside to do so.

Yours sincerely



DAVID GLADMAN
For Gladman Developments Limited