

a) **CON/10/1010/MM – Application for approval of details reserved by Condition 51 of DOV/10/01010 in respect of sewage and foul drainage – Phase 1 (Light Hill), Whitfield Urban Expansion**

Reason for the Report – An appeal against the non-determination of the above application for approval of details has been received by the Council. This report seeks Committee approval for the case the Council should make at the appeal and is also reported to Committee given the importance of the Whitfield development to the delivery of the District's housing land supply.

b) **Summary of Recommendation**

That the Council would have **REFUSED** to approve the details required by condition 51 had it been in a position to do so.

C51 provides that:

None of the dwellings within each phase or sub-phase shall be occupied until works for the disposal of sewage and foul water have been provided on the site to serve that phase or sub-phase and pipework shall be sized to serve 1933 units in accordance with details including a schedule and programme of works that shall be submitted to and approved in writing by the Local Planning Authority prior to the development of that phase taking place. The development shall be carried out in accordance with the agreed schedule and programme.

Reason: To ensure adequate measures are made for the disposal of sewage and foul drainage and sewage.

The current application was made in purported accordance with C51. However no details of the on-site scheme have been provided. The application therefore does not provide the detail which C51 requires. For reasons provided in this report, the Council cannot be satisfied on the information provided that the on-site details are satisfactory or appropriate.

It appears to be claimed that the Council can be satisfied that the on-site drainage scheme will be appropriate because there are other relevant statutory schemes. However, C51 is an appropriate planning condition: see Annex A to circular 11/95. It serves planning purposes. The controls under other statutory schemes are not an appropriate substitute for C51.

From the supporting documents, it appears that the Applicant is, in effect, seeking the removal of C51. The application is not however a s.73 application and C51 is justified for the reasons given in this report. If this was a s.73 application to remove or modify C51 it would be recommended for refusal because C51 is a necessary and reasonable condition here.

In any event, the focus of the Applicant's case is that the requirement for off-site capacity improvements is unreasonable and unnecessary. Off-site requirements are in this case addressed by the s.106 agreement and not by C51. This is not an application to amend the s.106 agreement. Even if a request to vary the S106 was received it is very unlikely that it would be agreed because the relevant s.106 requirements are required to address the issue identified in para 20 of the relevant section of the NPPG (see below). The planning system is the appropriate route to address the gap identified in the case of *Barratt Homes Ltd. v Welsh Water* where there new homes are to be

provided but where there is inadequate existing off-site capacity (this case is referred to in the correspondence attached at Appendix 2).

c) **Planning Policy and Guidance**

Whilst not directly relevant to an application under C51, the following policy framework justifies C51 and the s.106 obligation.

Dover District Core Strategy 2010

Policy CP11 of the Core Strategy makes a strategic allocation for circa 5,750 new dwellings and mixed use development on an area around Whitfield, called The Whitfield Urban Expansion Area (WUE)

Policy CP11 sets out specific guidance as follows:

The site to the west, north and east of Whitfield is allocated for an expansion of Whitfield comprising at least 5,750 homes supported by transport, primary education, primary health and social care, utility services and green infrastructure together with retail, financial and professional offices, eating and drinking establishments (Use Classes A1 to A5).

Planning permission will be granted provided:

iii. The proposals include a phasing and delivery strategy that is related to the provision of all forms of infrastructure and the creation of neighbourhood centres;

Policy CP6 of the Core Strategy provides that development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either already in place or there is a reliable mechanism to ensure that it will be provided at the time it is needed. The infrastructure table in the Core Strategy highlights the need for new waste water infrastructure to serve WUE: see table following para 3.90 and para 4.54.

Whitfield Urban Expansion (WUE) Supplementary Planning Document April 2011

The SPD carried forward the guidance in Policy CP11 of the adopted Core Strategy to provide a framework for the preparation of subsequent planning applications proposing to develop the site and aims to give certainty to local people and developers. It enshrined the need for good design and high standards of amenity and was taken into account in imposing suitable conditions when granting outline planning permission.

The SPD contains a concept masterplan and in addition to stating general principles, identifies 5 large and distinct development areas. One of those areas called Light Hill was identified for some 1420 dwellings together with a 2 form entry Primary School, local centre and other supporting services/infrastructure. This application relates to development at Light Hill and falls to be considered within this context.

The SPD paragraphs 4.26 and 4.35 identify the foul water constraints. Appendix 2 of the SPD details the infrastructure requirements for each

phase and envisages the need for “A new low rise pumping station and foul main in Light Hill. Offsite strategic pumping station (located elsewhere in the WUE), a low rise pumping main at Broomfield Bank Wastewater Treatment Works and connection to this facility.”

National Planning Policy Framework

- Paragraph 109 - the planning system should contribute to and enhance the natural and local environment by:
 - preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution
- Paragraph 120 – to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.....
- Paragraph 206 - planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects

Planning Practice Guidance - Water, Water Supply and Wastewater

- In the planning system, the preparation of Local Plans should be the focus for ensuring that investment plans of water and sewerage companies align with development needs. 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. Applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment.
- When drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies). This should be done in consultation with the sewerage company of the area.
- The timescales for works to be carried out by the sewerage company do not always fit with development needs. In such cases, local planning authorities will want to consider how new development can be phased, for example so it is not occupied until any necessary improvements to public sewage treatment works have been carried out

d) Relevant Planning History

DOV/10/1010: Outline application for the construction of up to 1,400 units, comprising a mix of 2-5 bed units, 66 bed care home (Class C2) and supported living units, with vehicular access off the A256; provision of new 420 place 2FE Primary School including early years provision, energy centre and local centre comprising up to 250sqm of retail space (Class A1-A3) along with all associated access arrangements, car parking, infrastructure and landscaping, with all matters (except the means of access off the A256) reserved for future consideration. (Revised Proposals). (The application was granted permission on a slightly revised smaller site for not more than 1250 dwellings). The 2010 Phasing and Delivery Strategy (approved as part of this permission and as required under CP11 para iii) for Phases 1 and 1A recognised the need for major new on and off site infrastructure [para 4.45]:

“...the Phase 1 area as a whole will be served by the new low rise pumping station located in the NE corner of Phase 1. ... This will need to connect to the strategic pumping station... that will, subject to outcome of the s.98 determination [requisition of new sewer at developer's cost] be positioned to replace/support the existing Sandwich Road PS. This will connect via a rising main to Broomfield Bank WWTW which has the capacity to serve the WUE...”

DOV/15/00878 Reserved matters application pursuant to outline permission DOV/10/01010 relating to the appearance, layout and landscaping of 94 no. dwellings together with garages and parking including all highway related details, sub phase 1A, Phase 1 (Light Hill), Whitfield Urban Expansion. Granted 12 October 2015

CON/10/1010/A Submission for approval of details relating to condition 51 – foul drainage- Sub Phase 1A, Phase 1, (Light Hill) Whitfield Urban Expansion - NOT DETERMINED. CURRENTLY IN ABEYANCE PENDING DETERMINATION OF THIS APPEAL.

CON/10/1010/LL Submission for approval of details relating to condition 51 – foul drainage in respect of 94 no. dwellings, Sub Phase 1A, Phase 1, (Light Hill) Whitfield Urban Expansion. – APPROVED 25 May 2016

CON/10/1010PP Submission for approval of details relating to condition 51 – through a Bio Disc system to treat foul water in respect of Phase 1, (Light Hill) Whitfield Urban Expansion, excluding 94 no. dwellings in Sub Phase 1A . NOT VALID

e) **Consultee and Third Party Responses**

Southern Water

Southern Water (SW) cannot recommend discharge of condition 51.

No detailed on-site drainage layout was provided to allow Southern Water to make any comments or recommendations.

As indicated in previous correspondence there is no capacity in foul network to accommodate the proposed development without improvement works to the existing network. SW notes that a budget estimate for the required improvement works was issued under Section 98 of the Water Industry Act by Southern water in August 2015; however the offer is already expired due to only three months validity. If the applicant wishes to proceed with the scheme, an updated offer shall be obtained from Southern Water.

f) 1. **The Site and the Proposal**

- 1.1 The site comprises Phase 1 of the WUE – sometimes called Light Hill – and essentially comprises the land lying within the triangle formed by Archers Court Road, the A.256 and the A.2. In some places it adjoins existing development and the southern boundary excludes a triangular area to the southwest corner. Development has commenced on sub-phase 1A comprising 94 dwellings and which is excluded from this submission. Approval of drainage details under C51 was given in respect of Phase 1A following submission of details of the layout of the drains, the capacity, location and design of the pumping station and the location of the rising main on site. The infrastructure for phase 1A is not sufficient to accommodate development pursuant to the remainder of phase 1.
- 1.2 The applicants have submitted a report by Utility Law Solutions (ULS) which purports to seek to demonstrate how the WUE Phase 1 can be effectually drained without causing detriment to the existing public sewerage network. It does so by relying on the statutory duties of Southern Water and contending that those duties mean that there will be adequate off-site capacity in time. In respect of on-site it appears to contend that because the on-site infrastructure will be offered for adoption, it necessarily follows that it will meet the C51 requirements. Thus on the Applicant's approach, foul drainage does not represent a planning constraint for the proposed development and it would be unreasonable to refuse to discharge the foul drainage condition associated with WUE Phase 1 (condition 51).
- 1.3 The applicants go on to note that the WUE is a centrepiece of the adopted Core Strategy and in planning capacity improvements to their public sewerage system Southern Water must provide a holistic solution to the planned significant housing growth in the Dover catchment. Improvements to the existing already inadequate public sewerage system would need to be undertaken by Southern Water should WUE Phase 1 be connected to this part of the public sewerage systems to resolve the pre-existing issues.
- 1.4 The applicants further note that Southern Water is to prepare a Drainage Area Plan (DAP) by March 2017 on the basis of which they will plan, fund and deliver wastewater treatment capacity required to serve new development. The Applicant's proceed on the basis that costs will fall on existing and new customers and no developer contributions will be sought. No timeline for delivery is though provided

by Southern Water (or the applicants), there is as yet no detail of what the DAP will contain or how it will be developed and in what timescale. The Applicant's contend that for a drainage authority to submit representations resisting the discharge of planning conditions is unreasonable in view of their duties and responsibilities. Three appeal cases are cited examining the necessity or otherwise of foul drainage planning conditions. The thrust in one case was that such a condition was unreasonable as there would be sufficient lead time to carry out improvements to the sewerage network before any houses would be occupied. In the other cases, Inspectors concluded that there was no need for such a condition as it only duplicated powers available under other legislation.

- 1.5 The applicants say that condition 51 should therefore be discharged. There is time for Southern Water to carry out the necessary works, other legislation addresses the situation and thus there is no impact which would make the development unacceptable in planning terms.
- 1.6 The above is a precis of a 75 page document. To assist the Committee, the Executive Summary of the ULS report is attached in **Appendix 1**. A full copy of the report is available to view on the Council's website.

2. **Main Issues**

- 2.1 The main issues that appear to arise as part of the applicant's case are :
- 2.2
 - Does the application provide the details required by C51?
 - Should the Council proceed on the basis that C51 can be treated as discharged because other statutory schemes will ensure the on-site drainage is appropriate
 - Alternatively, can this application be treated as a s.73 application to remove C51 and if so is C51 justified?
 - Alternatively, can this application be treated as an application to vary the s.106 agreement and if so is the removal of the requirement for sufficient off site capacity justified?

3. **Assessment**

- 3.1 The short answers to these points are as follows:
- 3.2 This is only an application to approve details (in the sense of signing off compliance with) required by C51 for the on-site foul water infrastructure for phase 1. No details or scheme is provided (compare with the details provided and approved on sub-phase 1A). The legal arguments raised do not arise on this type of application. This short point in itself is sufficient to recommend refusal of this application. All the following points only arise because the Applicant's argument that a planning condition is not necessary or reasonable.
- 3.3 The future possibility of adoption does not now mean that the Council can be satisfied that the requirements of C51 will be met. First there is no adoption agreement, no obligation for the on-site system to be

adopted and no details to inform any adoption agreement/discussions. Second, C51 is a planning control. The matters with which it is concerned are wider and different from those under the Water Industry Act 1991 including ensuring the on-site infrastructure is designed in a way consistent with the delivery of the wider masterplan.

- 3.4 This was not submitted as a s.73 application to remove C51 and it cannot be treated as such an application – as for example there are different publicity requirements. In any event, C51 is plainly justified so as to control the planning implications of the on-site drainage infrastructure (see below);
- 3.5 C51 is concerned with on-site provision. The section 106 agreement is concerned with off-site provision. There is no application to amend the s.106 agreement (which was part of a comprehensive package agreed with the developer). The s.106 obligations are in any event entirely consistent with the NPPG and consistent with cases which ULS do not refer to where their arguments were rejected.
- 3.6 The following paragraphs provide further information and assessment to support the above.
- 3.7 External legal advice has been sought which confirms that the legality of condition 51 cannot be challenged on an application for approval of details. Nor can condition 51 be removed by such an application. The Council has therefore been advised that the applicant's arguments in respect of that issue are irrelevant to the application under consideration. The following explains that position.
- 3.8 Outline permission for phase 1 of up to 1400 units was granted on 30th April 2015 ("the Phase 1 Permission") Condition 51 of that permission required the following:
- None of the dwellings within each phase or sub-phase shall be occupied until works for the disposal of sewage and foul water have been provided on the site to serve that phase or sub-phase and pipework shall be sized to serve 1933 units in accordance with details including a schedule and programme of works that shall be submitted to and approved in writing by the Local Planning Authority prior to the development of that phase taking place. The development shall be carried out in accordance with the agreed schedule and programme."*
- 3.9 The National Planning Policy Framework advises that planning conditions should only be imposed where they satisfy what is commonly referred to as the six tests. Namely; they should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. In those respects, officers were quite satisfied that the tests were satisfied when the original condition was imposed.

Condition 51 refers to on-site foul drainage requirements only, with the signed S106 Agreement relating to service infrastructure works from off-site to a point within the boundary of the site. The implementation of works relating to both the above is required prior to the occupation

of any dwellings. The requirement for the condition relating to on-site works arises for 4 reasons.

1. Although it is usually the case that foul sewerage systems are adopted by the sewerage undertaker, there is no actual requirement for that to happen and no guarantee that it would. In such circumstances the Council needs to be satisfied that any private system would be satisfactory to adequately dispose of foul sewage from the site.
 2. Any solution for phase 1 needs to be compatible with a strategic foul drainage solution for the greater WUE. In that respect there are different options as to where connection points to a public system off-site might be established. Clearly therefore it is important for the Council to be able to ensure that any solution does not prejudice the strategic solution, for example, by ensuring that it is capable of serving further phases of development or could be improved to do so.
 3. Because of the topography of the site, with gradients running in different directions, the Council needs to be satisfied that foul drainage infrastructure is appropriately located on the site, for example siting of pumping stations, and that such infrastructure is compatible with the site layout in terms of such matters as relationship with dwellings, means of access and landscaping.
 4. Leading on from the above, if it is intended to have one large pumping station to serve the whole of phase 1, then it is likely to involve the need for compounds, service access and above ground structures. The Council will also need to be satisfied that such components relate satisfactorily to the approved layout.
- 3.10 Annex A of Circular 11/95 (which remains extant) contains a model condition covering on-site drainage. On the facts here imposition of C51 was justified. As noted above, the applicant takes a different view and argues that such a condition is unnecessary and/or unreasonable. However their approach is based on their interpretation of the inter relationship between the Water Industry Act and Planning Legislation. They do not engage with the planning justification for C51. If they wished to challenge the appropriateness of C51 then the correct avenue is a s.73 application. The applicants have not exercised that option which has different statutory procedural requirements to the current application.
- 3.11 As noted above, the applicants have previously submitted details as a part approval under the condition in relation to sub-phase 1a (the first 94 dwellings of phase1). That submission contained detailed on-site drainage proposals, supported by technical calculations, to demonstrate how the 94 units would be serviced from a foul drainage point of view. Following technical assessment of those details, they were approved (application DOV/10/01010/LL refers). Submission of those details would therefore appear to run counter to the applicants' current arguments in respect of the validity of the condition.

Do the submitted details satisfy the requirements of the condition?

- 3.12 The only issue relevant to the consideration of this application is in relation to whether it specifically complies with condition 51 or not.
- 3.13 The requirements of the condition specifically require details of on-site foul drainage works together with a schedule and programme of such works. The applicant has also confirmed that the submission relates to the whole of the remaining part of phase 1 i.e. the whole of the area covered by the outline permission with the exception of the 94 dwellings approved as part of sub-phase 1a. To satisfy the condition would require a detailed drainage layout for the whole of the remainder of phase 1, supported by technical drainage calculations and details of other associated drainage infrastructure, such as the on-site pumping station size and location, any emergency storage tanks, points of connection with the public sewer network and details as to how and when each subsequent sub-phase would be connected into the system. These details would allow the adequacy and planning implications of the infrastructure to be considered.
- 3.14 Instead, apart from the general arguments on whether a condition is required or not, what has been submitted is a draft drainage 'strategy' as opposed to a detailed scheme. Indeed the applicants specifically refer to a detailed design being drawn up at a later stage in consultation with the relevant statutory bodies in accordance with standard adoption criteria. Thus, details of the pumping station, storage tanks, connection points to the main sewer network are not provided current time, there is no overall drainage layout submitted, no technical details of the size of pumping station required, nor how and when the pumping station for sub-phase 1a would be upgraded over time to cater for increased foul water flows. There is no detailed schedule or a programme of when such works would be implemented in tandem with the housing. In short, the submitted details do not satisfy the requirements of the condition and therefore cannot be approved.
- 3.15 No issue can be raised on this application in respect of the s.106. However for the avoidance of doubt the Council's position is that the s.106 obligation imposes a restriction on the occupation of any units until adequate off-site capacity is provided. Such requirements are consistent with the NPPG and the decisions which ULS have not addressed and where their arguments were rejected. The Council's understanding was communicated to the Applicant in March 2016 and no response has been received. The letter is attached to this report at Appendix 2.

4 Conclusion

- 4.1 The Council was correct to impose C51 and it is lawful. The details submitted clearly do not satisfy the requirements of the condition and therefore could not have been approved had the Council been in a position to do so. In your Officers' view the wider arguments advanced by the Applicants cannot be considered under the current appeal. Even if the justification for C51 can be addressed on this application, C51 is justified for reasons including those set out above.

- 4.2 The s.106 agreement addresses off-site issues. Whilst not directly relevant to the issues on this application, as things stand and absent any progress in discussions between the Applicants and Southern Water, the Council has no confidence that adequate off site capacity will be in place before the first homes of phase 1 are completed.
- 4.3 It is extremely disappointing that this situation exists. The WUE has evolved and been confirmed through a comprehensive planning process including preparation and adoption of a Core Strategy, preparation and approval of supplementary planning guidance for the development and the granting of outline planning permission. Both Southern Water and the developer have been involved in every step of that process lasting some 8 years from the publication of Preferred Options. It was always clear that upgrading of sewerage infrastructure would be needed to meet the housing growth agenda. Importantly, as members will also be aware, development of Whitfield in a timely manner is extremely important to delivering the Council's 5 year housing land supply. Accordingly, officers will continue to work with both parties to find a long term strategic solution.
- 4.4 In the meantime, it is recommended that Committee agree with the above analysis in order that those arguments can be advanced by the Council at the forthcoming appeal.

g) **Recommendation**

- I That the Committee confirms that it would have refused to approve the details reserved by condition 51 submitted under application no DOV/10/01010/MM, had it been in a position to do so for the reasons set out in the report.
- II Powers be delegated to the Regeneration and Delivery Manager to settle the detailed wording of the case for the local planning authority in line with the issues set out in the report and as resolved by the Planning Committee.

Case Officers

Kim Bennett/Mike Dawson

Appendices

- Appendix 1: Executive Summary, Proposed Development of Land – Whitfield Urban Extension Phase 1 Light Hill (excluding Sub-phase 1A), Foul Drainage Analysis – Discharge of Condition 51
Utility Law Solutions August 2016
- Appendix 2: Letter dated 18 March 2016 from Dover District Council to the applicant

APPENDIX 1

Proposed Development of Land - Whitfield Urban Extension Phase 1 Light Hill (Excluding Sub-phase 1A) - Foul Drainage Analysis A. Executive Summary

Utility Law Solutions (ULS) specialises in the application of water and sewerage law in relation to the housebuilding industry and has been appointed by Halsbury Homes (South East) Ltd (Halsbury). to advise on foul drainage matters relevant to its proposed development of land known as Whitfield Urban Extension Phase 1 Light Hill excluding Sub-phase 1A (WUE Phase 1).

The purpose of this report is to outline how WUE Phase 1 can be effectually drained without causing detriment to the existing public sewerage network and also to set out the legislative framework which governs the water and sewerage industry. Sewerage undertakers have statutory duties and powers designed to ensure they manage the public sewerage system in a way which can accommodate new development and a defined funding mechanism through which this can be achieved. Foul drainage does not represent a planning constraint for the proposed development and it would be unreasonable to refuse to discharge the foul drainage planning condition associated with WUE Phase 1 (Condition 51).

It is proposed that once developed WUE Phase 1 will comprise of up to 1156 residential dwellings (1250 units less the 94 units being constructed as part of Subphase1A) and that a foul water drainage system will be constructed and connected to the existing public sewerage network. This network is owned and operated by Southern Water.

WUE Phase 1 is part of a much larger development known as the Whitfield Urban Extension (WUE) which is the centrepiece of the Dover Core Strategy in relation to housing provision in the Dover District Council area for the next decade and beyond. The Dover Core Strategy was adopted by Dover District Council in February 2010. The WUE has a total planned capacity of at least 5,750 dwellings in Whitfield with a further 4,000 new dwellings in the sewerage catchment that serves Dover. WUE Phase 1 only represents some 11% of the overall housing provision that is planned to take place in the Dover sewerage catchment area. In planning capacity improvements to its public sewerage system, Southern Water must provide a holistic solution to accommodate the significant housing growth that will take place in its Dover catchment over the next decade and beyond.

Southern Water has carried out an assessment of its local sewerage network in order to understand the likely impact of introducing new foul flows from the whole of the WUE Phase 1 (1156 new dwellings). Although the foul flows from WUE Phase 1 could be accommodated in the public sewerage system during dry weather conditions and normal rainfall, existing capacity inadequacies may be exacerbated during infrequent, extreme rainfall events. Improvements to the existing, already inadequate, public sewerage network would need to be undertaken by Southern Water should WUE Phase 1 be connected to this part of the public sewerage system and to resolve the pre-existing issues.

In addition, following an application by Dover District Council pursuant to section 98 of the Water Industry Act 1991, Southern Water undertook a hydraulic modelling assessment of its public sewerage system to ascertain the impact of the foul flows from the 5750 dwellings that comprise the WUE. The assessment found that the foul flows from the WUE should ultimately be connected to the public sewerage network through the provision of new strategic pumping stations serving the whole of WUE (and possibly also including existing foul flows in Whitfield itself) to ensure no detriment occurs during extreme rainfall events. Southern Water has confirmed that the development of a Drainage Area Plan (DAP) of the

Dover catchment is currently underway with an anticipated completion date of March 2017. Based on the outcome of this DAP Southern Water will plan, fund and deliver wastewater treatment capacity required to serve new development through the water industry's price review process. The cost will be borne by Southern Water's existing and new bill paying customers and no developer contributions will be sought. ULS has suggested that a strategic solution to deal with the flows from the future development of around 9,750 new dwellings arising from the whole of the Dover Core Strategy should be pursued by Southern Water. This suggestion has not been dismissed and Southern Water pointed out that a similar approach (for the WUE) was offered to Dover District Council as a response to their section 98 application in 2014. With regard to sewerage network capacity (i.e. underground sewers and associated pumping stations), Southern Water has stated that it recognises that separate drainage for Whitfield to the wastewater treatment works is an option. This is also recognised in the adopted Whitfield Masterplan (paragraph 4.27). Southern Water has stated that it will further consider this option through the above mentioned DAP.

A sewerage undertaker will typically submit representations to local planning authorities resisting the discharge of planning conditions which, as demonstrated by this report and its appendices, is unreasonable. A detailed analysis of the duties and responsibilities of sewerage undertakers prescribed by the water industry statutory framework is set out in Appendix 5 of this report. The effect of these duties and responsibilities on whether it is necessary or reasonable to influence the imposition of planning conditions in relation to foul drainage is also examined.

The necessity or otherwise of foul drainage planning conditions has been tested in recent planning appeals in which ULS has been involved. Decisions from three of these cases are outlined below:

Appeal Decision APP/Y2810/A/14/2228921

The Planning Inspector received an analysis from ULS based on the same principles detailed in this report and also representations from a sewerage undertaker requesting that a foul drainage planning condition was imposed. The Inspector stated that a condition relating to the completion of off-site public sewer improvement works would be unreasonable as it would be at least 2 years before any houses would be occupied and discharging foul flows to the public sewerage network. The Inspector determined that these timescales gave the sewerage undertaker adequate time to implement any necessary improvement measures to the public sewerage network pursuant to the statutory framework that applies to the water and sewerage industry. The Inspector's full comments are set out in Appendix 5.

Appeal Decision APP/F1610/A/14/2228762

The Planning Inspector made the following comment at paragraph 56:-

The foul sewage and the water supply systems involve infrastructure elements that are inadequate. The consultation response from Thames Water suggests that conditions should be imposed to require an assessment of the additional capacity that might be required and to indicate suitable connection points. However, there is a statutory duty to provide such connections under the requirements of the Water Industry Act 1991. Hence, there would be no need for planning conditions to duplicate powers available under other legislation, as the submitted notes confirm.

Appeal Decision APP/F2605/W/15/3137812

The Planning Inspector included the following comments at paragraphs 26 and 31:-

26. Many thought that the infrastructure in Watton would be unable to cope. Anglian Water has a duty to deal with foul sewage, through improvements to the system if necessary; the broad principle is that the situation should be no worse than before the development was constructed, not that development should resolve any existing problems.

31. A condition on foul sewerage (18) is unnecessary because it is the subject of other legislation.

Case law has set a precedent relating to the consistency of decision making by planning authorities or inspectors, confirming that whilst a decision maker can depart from a previous decision which considered the same or similar facts, they must fully justify the reasons for doing so. (Fox Vs SoS [2012] EWCA Civ 1198).

Considering the timescales associated with this development site (as was the case with the Appeal sites referred to above where no foul drainage condition was imposed), it is clear that Condition 51 should be discharged. There is sufficient time for Southern Water to carry out measures that are necessary to accommodate the foul flows from the development in the public sewerage system. Southern Water is already aware of the nature of improvement works that may be required to accommodate the significant increase in foul flows that will arise from new development in the Dover sewerage catchment area. It is clear that these sewer improvement works could be implemented in a timescale to suit the increase in foul water discharges to the public sewerage network that will arise through the construction of the new housing planned under the Dover Core Strategy.

In summary, this report clearly demonstrates how WUE Phase 1 can be effectually drained without causing detriment to the public sewerage system. Matters relating to foul drainage have been properly assessed and are comprehensively addressed in other primary legislation, meaning there is no impact which would make the development unacceptable in planning terms thus allowing Condition 51 to be discharged.