



Report To:	Performance Monitoring Panel
Date:	10 March 2026
Subject:	Briefing Note on Anglian Water Protocols
Purpose:	To provide members with an overview of the implications of water infrastructure issues on planning decisions
Key Decision:	No
Portfolio Holder:	Councillor Henry J Bingham, Portfolio Holder for Assets and Strategic Planning
Report Of:	Phil Norman, Assistant Director – Planning and Strategic Infrastructure
Report Authors:	Paul Jackson, Executive Programme Manager Nick Atkinson, Development Manager (Interim)
Ward(s) Affected:	All
Exempt Report:	No

Summary

At PMP held on 10 December 2025 Anglian Water provided a presentation to members on their wider role, this including their role in the planning process, their recent performance in South Holland, and on planned improvements across the network.

Following a wide-ranging discussion, members passed on a range of comments to the planning service. In summary, PMP requested a briefing note to be provided which addressed the implications of the position Anglian Water were seeking to adopt in relation to development management decisions.

Recommendations

That;

- (a) the contents of this report be noted; and
- (b) that this report is presented to members at Planning Committee in order to assist with their decision-making in relation to applications for planning permission.

Reasons for Recommendations

This recommendation meets with the request of PMP.

Other Options Considered

None. The 'Do Nothing' option is not appropriate.

1. Background

- 1.1 At PMP held on 10 December two officers from Anglian Water attended PMP. These officers were Anglian Water's Regional Engagement Manager alongside their Pre-Development Planning Manager. The presentation given by Anglian Water was framed around a presentation, which for ease of reference is attached at Appendix A.
- 1.2 Following the presentation members raised a wide range of issues with Anglian Water. Whilst much of the discussion was focussed on Anglian Water's purpose and their role within the region, a large part of the debate centred on Anglian Water's role in the context of responding to individual applications for planning permission.
- 1.3 Anglian Water clarified that their role in the planning application decision-making process is a limited one, and for two reasons. These two reasons centre on two facts:
 - that developers have an automatic right under the Water Industry Act 1991 to connect to Anglian Water's foul sewer network; and
 - that Anglian Water are not statutory consultees in the planning application process.
- 1.4 Notwithstanding the above, Anglian Water clarified that they routinely respond to applications for both minor and major development. They also give advice, when requested to do so, at pre-application stage and in relation to Scoping Opinions.
- 1.5 Anglian Water further clarified that they were lobbying government for policy changes to improve outcomes for both the environment and their customers.
- 1.6 In essence, Anglian Water made it plain that they were becoming more robust when responding to planning applications, despite the fact that they were not a statutory

consultee. They were also seeking to adopt a similarly robust approach when engaging with emerging Local Plans, for which they are a statutory consultee.

2. Report

2.1 Anglian Water's planning position:

2.2 Anglian Water state that whilst they remain conscious of the need for local planning authority's (LPA's) to maintain a 5 year land supply (5 yls) they have taken legal advice which confirms that a lack of capacity within their network, or within a particular Water Recycling Centre, is a material planning consideration.

2.3 The legal advice obtained by Anglian Water suggests that LPA's can lawfully refuse planning permission, or impose pre-occupation conditions, until upgrades to the network are completed.

2.4 In essence, Anglian Water are of the view that LPA's may refuse planning permission where the WRC/network capacity is lacking, thereby ensuring that environmental protection is achieved alongside compliance with national and local planning policy.

2.5 Anglian Water are, consequently, increasingly suggesting that applications for development should be conditioned such that developments cannot be occupied until network capacity issues or connection issues are resolved.

2.6 In the context of a conditional approach, Anglian Water are routinely seeking to suggest the imposition of a condition along the following lines:

'No occupation of the development is hereby permitted until written confirmation has been provided to the Council by Anglian Water confirming that there is sufficient headroom at the [xxx] water recycling centre to accommodate the foul flows from the development'

2.7 The above is in the form of a Grampian condition. To be clear, a Grampian condition in planning is a negative, pre-commencement restriction that prevents development from starting or being occupied until specific, off-site, or third-party infrastructure works are completed.

2.8 The LPA's role:

2.9 PMP are advised that the determination of planning applications is, in most instances, a function exercised by the district council in its role as local planning authority. The LPA makes planning decisions in accordance with national guidance and the prevailing local development plan, unless material decisions indicate otherwise.

2.10 Additionally, and as members are routinely advised at Planning Committee, all planning decisions need to be made conscious of the need to weigh in the balance the benefits of the proposals against the disbenefits.

2.11 The use of conditions:

- 2.12 When making planning decisions if matters can be addressed by condition they should be, but in order for a condition to be lawful it needs to pass the tests of necessity, relevance (to both planning and the development proposed), enforceability, precision and reasonableness.
- 2.13 In general terms, conditions should not be overly burdensome and the emphasis should be on minimising their number.
- 2.14 In the specific context of pre-commencement conditions, these should only be imposed where they are strictly necessary and with the applicants' agreement. It also needs to be borne in mind that unreasonable or invalid conditions can be challenged through the appeal process. Where they fail the tests an award of costs is likely.
- 2.15 It follows that the use of Grampian conditions requires care; and that where these conditions are imposed they must be generally capable of resolution within the standard three-year time limit of the development itself. There can be no ambiguity or uncertainty where such conditions are employed.

2.16 Network Capacity Concerns:

- 2.17 Anglian Water are not alone in seeking to alter their approach to responding to planning applications. Throughout 2025 it became evident that a number of national Sewerage Undertakers, including Anglian Water (AW), have altered the approach to how they view and respond to consultations on planning applications for residential development. This is specifically the case in areas where recent concerns have come to light regarding an apparent lack of network capacity (referred to as 'negative headroom') to accommodate the additional load arising from new development within the existing sewerage infrastructure/network. The primary concern appears to relate to a lack of headroom capacity at various Waste Water Treatment Works (WWTW) within the area of a particular undertakers' responsibility.
- 2.18 In the case of South East Lincolnshire, this new approach has resulted in a growing number of objections being registered to planning applications for residential development within the Partnership area by AW. This primarily relates to applications for major residential development, which are those that represent key and strategic sites for achieving future growth aims and delivering much needed housing provision for the Partnership area and its residents.

2.19 Legal Framework

- 2.20 As a matter of context, it is a legal right for developers to connect into the sewerage network under Section 106 of the Water Industry Act 1991. In such circumstances the Act confirms that ***'The sewerage undertaker cannot refuse to permit the connection on the ground that the additional discharge into the system will overload it. The burden of dealing with the consequences of this additional discharge falls directly upon the undertaker and the consequent expense is shared by all who pay sewerage charges to the undertaker.'***

2.21 The current approach from a range of sewerage undertakers primarily stems from a lack of historic investment in the upgrading and maintenance of the national sewerage network over a sustained period of time, following past and current housing development, which has resulted in current capacity issues affecting certain areas and settlements across the Partnership area.

2.22 The LPA perspective:

2.23 From a development management perspective, the LPA's of the South East Lincolnshire Councils Partnership ('The Partnership') acknowledge and agree that a lack of capacity within a sewerage system, to accept additional load, is a material consideration in the determination of a planning application. However, in areas where AW considers the sewerage network is at or has already exceeded capacity, its approach has generally been to either submit an 'objection' to a planning application, or to request the imposition of a pre-occupancy condition prohibiting the commencement of the development until such time as upgrades to the system have taken place. In the view of officers this blanket approach is inherently flawed given that each application must be determined on its own merits, and in general accordance with the provisions of the development plan, unless material considerations indicate otherwise.

2.24 It also needs to be noted that, in a national context, the approach adopted by Anglian Water has not been universally accepted by individual LPA's. The reason for this is clear. A blanket approach fails to take account of the individual circumstances of not only individual development proposals but also the planning status of individual sites. Whilst the imposition of a bespoke drainage condition has been supported at appeal in site-specific circumstances, Planning Inspectors have repeatedly returned to the NPPF for clarity. This makes clear, at paragraph 201, that:

'The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.'

2.25 The conditional approach mooted by Anglian Water has some merit, and particularly so where clear and compelling evidence can be provided that the 'headroom capacity' within a particular WRC is at or over capacity. However, Anglian Water need to go further. They need to demonstrate that there are published plans to upgrade the particular WRC within a reasonable timeframe; or, in the alternative, to recommend refusal of permission and provide clear evidence demonstrating why a particular site cannot come forward within a reasonable timeframe. Officers consider that it is inappropriate for a blanket approach to be taken to all sites potentially served by a WRC which is at or above capacity. Such an approach would effectively stymie all development within a particular locality until such time as Anglian Water effectively addressed the problem. It cannot be the case that the onus is placed on the applicant to demonstrate a matter largely outside of his or her control. This is not the role of the developer and, in this context, such a conditional requirement is considered unreasonable.

3 Moving Matters Forward:

3.1 In order to seek to move matters forward the most reasonable approach would be for the LPA's, across the Partnership, to adopt the following strategy:

3.2 Allocated Sites:

3.3 For sites that are allocated for housing within either the South East Lincolnshire Local Plan (2019) and the East Lindsey Local Plan Core Strategy (2018), an objection raised by AW on the basis of a lack of network capacity will not be considered reasonable. Furthermore, in such circumstances the LPA will not consider the imposition of a condition.

3.4 The reason for this approach is entirely straightforward. Anglian Water are a statutory consultee throughout the Local Plan process. If there were genuine headroom or capacity concerns at site allocation stage, Anglian Water ought to have raised these concerns at that time. The fact that they did not do so, either at site allocation or Local Plan inquiry stage, weighs heavily against any attempt to do so further down the line. Equally, AW have been well aware of the status of statutorily allocated sites since at least the date of adoption of the current suite of Local Plans. They have had ample opportunity to put into place a programme of works to address the capacity issues associated with sites which were known to be coming forward. The fact they have not done cannot now be used as a valid reason for objecting to proposals for sites which have been formally allocated and enshrined in statute.

3.5 In essence, officers consider it unreasonable for Anglian Water to conclude that developments which were known and strategically planned, and which would ordinarily fall within the remit of its Asset Management Team for assessment, are unable to proceed as a result of limitations arising from forward planning around sewerage infrastructure. In summary, allocated housing sites should have been both considered and catered for within the existing 'headroom capacity'. In a development management sense, statutorily allocated housing sites need to be considered to accord Policies 2, 3 and 4 of the SELLP or with Policy SP16 to the East Lindsey Local Plan Core Strategy (2018). All allocated sites are, in land use terms, acceptable in the context of the plan-led approach.

3.6 In summary, throughout the partnership area the view of the LPA must be that the refusal of planning permission for allocated sites on grounds of wastewater capacity would be unreasonable. The development industry needs certainty and each LPA needs to meet its housing targets and seek to maintain a 5 year land supply. To refuse planning permission for an allocated site on the capacity grounds being promoted by Anglian Water would be wholly unreasonable, difficult to sustain at appeal and highly likely to result in an award of costs. This is a risk that would be solely borne by the relevant LPA, rather than Anglian Water. Given all of the above, officers are of the view that there can be no reasonable planning grounds to seek to resist the development of known and allocated sites on grounds of headroom capacity.

3.7 Non-allocated sites:

3.8 Where Anglian Water lodge a standard objection, on network capacity grounds, to proposals for housing on unallocated sites the LPA will engage in dialogue in order to

seek to reach agreement on an appropriate way forward. Anglian Water will be expected to provide, within a reasonable timeframe, clear evidence of the site-specific capacity issues. It will be incumbent upon Anglian Water to provide:

- a. Detailed evidence that there is presently insufficient capacity, or capacity constraints at the relevant WWTW, taking into account both the development proposal itself and all existing developments in the locality that are capable of being implemented. This information will need to be provided on a site-specific basis and calculated in relation to the relevant WRC. Evidence provided on the basis of a wider geographical area will not be taken into account given that such an approach effectively seeks to stymie development until such time as network capacity issues are properly addressed by the statutory undertakers themselves.
- b. Clear evidence that it is reasonably likely that sufficient 'headroom capacity' will become available (through planned network upgrades) within the three-year lifespan of any planning permission issued for the proposed development. This accords with the standard timescale condition attached to all permissions. If Anglian Water cannot provide this information then the blanket conditional approach they are presently suggesting fails to meet the required tests of reasonableness.
- c. In the absence of (b) above, Anglian Water could alternatively provide information relating the provision of other, site-specific, means of effectively dealing with the treatment and disposal of waste water that were not 'headroom' dependent (e.g. on-site private waste treatment plants).

3.9 In circumstances whereby further evidence is provided by AW at this stage of the application process, and where this evidence clearly demonstrates that any of the above 3 options are suitably met, then the LPA will consider the imposition of a suitably worded condition. The condition itself would need to include a requirement to provide details of any necessary off-site infrastructure improvements and a timetable for completion – following which occupation shall only proceed in accordance with the approved phasing plan and/or infrastructure delivery plan.

3.10 In the alternative, and in circumstances where none of the aforementioned 3 options can be evidenced or met, the imposition of the type of Grampian condition presently suggested by Anglian Water will not be considered appropriate. Instead, AW will be requested to either withdraw its request for the imposition of a condition or to submit a consultation response confirming its outright objection to the development proposals, this including site specific grounds and reasoning to substantiate its position in the event of a subsequent appeal. Where such an objection, and robust reasoning, is provided this will be negatively weighed in the planning balance as harm, which may result in the refusal of the application by the LPA.

4 Conclusions

4.1 This report provides the background to Anglian Water's current approach to responding to planning applications within both South Holland and the wider Partnership area. It acknowledges the status of Anglian Water as non-statutory consultees on development proposals and sets out their rationale for objecting to applications for planning permission unless a condition is imposed to prevent

occupancy until headroom capacity issues are addressed. It explains the procedural implications of Anglian Water's approach to commenting on applications for housing development and sets out a proposed LPA response in order to move matters forward.

- 4.2 The proposed approach acknowledges that capacity issues within the waste water network are relevant matters which have a bearing on the determination of planning applications. However, from the perspective of the LPA it is considered that Anglian Water is not in a position to seek to impose unreasonable planning conditions on sites which are already statutorily allocated within our formally adopted Local Plans, plans on which Anglian Water were a statutory consultee.
- 4.3 In relation to non-allocated sites, a clear way forward is proposed. This gives Anglian Water the opportunity to provide the LPA with sufficient information upon which to base a balanced planning decision.
- 4.4 Overall, the proposed protocol proposes a balanced way forward which should have little impact on the ability of the Council as LPA to continue to deliver its currently allocated housing supply. This should provide comfort that there will be little likelihood of interventions from central government on the basis of the Council's inability to deliver its currently allocated housing land.

Implications

South and East Lincolnshire Councils Partnership

None

Corporate Priorities

None

Staffing

None

Workforce Capacity Implications

None

Constitutional and Legal Implications

None

Data Protection

None

Financial

None

Report Approval

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