



# WildFish.

## No capacity, no development

The environmental impact of planning without a sustainable water supply and sewage infrastructure.

[wildfish.org](http://wildfish.org)  
[info@wildfish.org](mailto:info@wildfish.org)

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# Executive summary

This report examines the crisis of unsustainability for developments that proceed without adequate provision for water supply and wastewater treatment. At the moment, there is a lack of integration between water policy and planning. New development can be granted planning permission without proper thought being given to the capacity of our sewage and water infrastructures to cope with increased demand.

There is no joined up thinking. And it will get worse unless a solution is found.

The report identifies critical flaws in the current regulatory system governing water supply and sewage treatment. It assesses the environmental impacts of abstraction and sewage discharge in relation to the Government's development targets and incorporates written responses from 26 local councils.

To address these challenges, the report proposes a series of straightforward legal amendments to ensure that future development aligns water supply with demand - without causing further harm to the environment.





# Introduction

Our rivers are under threat from over-abstraction and pollution. We currently abstract 14 billion litres of water per day from our rivers in England [1] and in 2023, 464,056 sewage spills were recorded discharging into our rivers and the sea. [2] The government predicts that there will be a shortfall of 5 billion litres of water per day by 2050 to meet the increased demand. [3] And there is no sign that the amount of sewage spilt into our rivers is decreasing.

What we see on the ground is that because of the demands on water resources for public water supply and on the sewers, as well as the impact of climate change, our rivers often do not have sufficient, unpolluted water to support fish, insects and wildlife. Some rivers are completely dried out and others have water that is so polluted with sewage and chemicals that few species can survive.

## The impact of over-abstraction on rivers

- Fish are less able to migrate up and down rivers to complete their life cycles.
- Pollutants in the water become more concentrated because of the lack of dilution.
- Increased sedimentation clogs up rivers because they do not have the energy to remove them.
- There is reduced shelter and food availability for all aquatic life.
- Shallow water means temperatures increase and oxygen levels decrease, which can lead to mass fish mortalities





## Demand is outstripping supply

Demands on sewage and the provision of water for consumption are out of step with the capacity of the water companies to deliver adequate sewage treatment or to provide sufficient water for new homes, without harming these waterbodies through over-abstraction and sewage pollution.

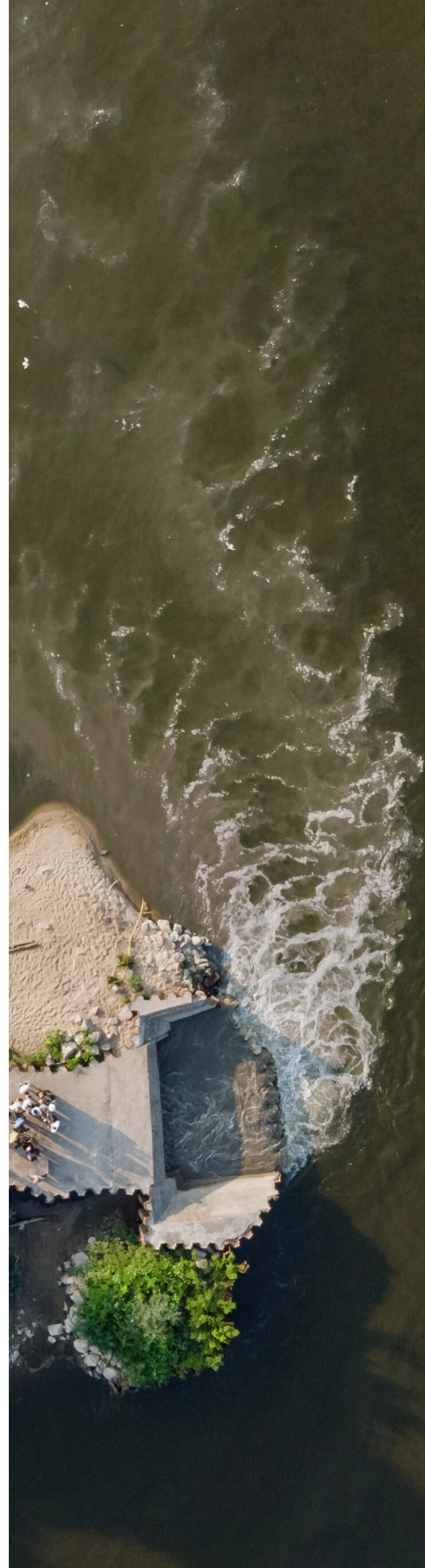
In the South of England, where there is a greater demand, a larger population and intermittent supplies of water, chalk streams and their aquifers bear the brunt of the onslaught.

Our call for action comes at a time when the Government wants to increase substantial housebuilding, increasing local demand for water and putting excessive pressure on sewage systems that do not have the capacity to cater for the increase. [4]

Our other reports and blogs look at ways that the regulation of the industry can be tightened up to make sure that the Environment Agency (EA) and Ofwat do their job to enforce against bad practice and to make sure that sewage is treated to the right standard. But this report looks at one important aspect of demand and identifies how the housing and planning system is out of step with plans for water supply. What we need is proper, coordinated forward planning, to ensure appropriate infrastructure is in place before development is brought forward.

## The impact of sewage on rivers

- Sewage contains high volumes of nitrogen and phosphorus. In excess, these nutrients can stimulate the growth of algae which, in turn, can starve freshwater species of oxygen, disrupting natural food chains.
- Ammonia in sewage is also directly toxic to fish and invertebrates.
- Sewage contains many chemicals from bleaches and detergents to medications, solvents and plastics. These chemicals can combine to form harmful mixtures that impact a range of species.
- Sewage also contains “forever chemicals” and plastics which build up in the river and the food chain.





# How water supply and sewage are currently regulated

Abstraction and sewage are subject to regulation at two levels. The first is on the riverbank where there are permits and licenses for discharging treated sewage and for taking water; the other is at a higher, strategic level where the regulators (the Ofwat and the EA) work with the water and sewage companies to plan for meeting supply and investing in infrastructure. Most of this happens under two three pieces of legislation: the Environmental Permitting Regulations 2017, the Water Industry Act 1991 (WIA) and the Water Resources Act 1991(WRA).

The EA deals with permitting and licensing; Ofwat deals (in theory at least) with the long-term plans and investment for supply (upgrading sewage works; finding alternative sources of water etc.). The EA should also police the water company's obligations to treat sewage and use the permitting and licensing to protect the environment.

The difficulty is that the regulatory and permitting sides are not properly aligned. So, permits do not always reflect what the water company must do to meet capacity requirements. That is made worse because these regimes are also out of step with the controls on planning and development. [5]

When a water company applies for a licence to abstract water, the EA will grant the licence subject to particular conditions under the licencing regime set out in the Water Resources Act 1990. The regime for permitting and licensing should protect the environment; it should also ensure that demand and supply are in lock-step. But that is rarely the case.

Sewage discharges are covered by the permitting regime under the Environmental Permitting Regulations 2016. But much of the EA's ability to enforce or regulate permits is constrained by the permit. Often, they contain so many exemptions including exceptional flow conditions for rainy days that a coach and horses can be driven through them, most obviously through the use of storm overflows.

## A flawed regulatory model

The amount that can be abstracted and the quality of the discharges from sewage treatment works (STWs) should be waterbody-specific to ensure that the river in question is not abstracted beyond its capacity or polluted so that it fails its ecological targets. But that is not what happens in practice. For example, no sewage should ever be discharged into a chalk stream. But for reasons of poor management, poor regulation and increased housing pressure, it often is.

All abstraction licences and discharge permits should be reviewed frequently so that the full impact of the permitted activity is taken into account to comply with the requirements of legislation including the Water Framework Directive (WFD) and the Conservation of Habitats and Species Regulations 2017 but, again, that is not what happens and the results are patchy.

The permitting and licensing regimes are made doubly useless due to a failure to monitor, investigate and enforce by the EA.

To be sustainable, water supply should meet demand. And demands should not surpass the capacity of a system. That means adequate treatment and appropriately conditioned permits and licences. The planning for that should be done by the water companies and the EA/ Ofwat, predicated on future projected use and population growth. Then steps should be taken to ensure long term provision to avoid damaging vulnerable rivers; licences should be set accordingly. But that is not what happens in practice.

There are systems in place, but they are often uncoordinated. For instance, the Water Resource Management Plans (WRMPs) contain projections of demand but not always the real-time pressure from new development; River Basin Management Plans (RBMPs) under WFD contain "Programmes of Measures" with insufficient detail to set out effective measures to deal with the impacts of abstraction and sewage pollution. That is why the control of "demand" becomes more and more important.



# Predicting demand

The water companies are under a general duty to provide and maintain water supply systems (s 37 WIA) and to treat sewage (s 94). But water supply and sewage treatment go hand in hand with good planning to ensure that supply and treatment meet demand without causing damage to the environment.

Knowing how much sewage and abstraction will increase is closely related to forecasts for population increase. So, how does the water company know how much water or sewage capacity it will need?

Southern Water, to take an example, includes in their WRMP "Growth scenarios" which provide a demand forecast which relies on, for instance, "Local Plan housing growth trajectory" as well as "Local Housing Need or Objectively Assessed Housing Need" and allowing for "new settlements" calculated slightly above the "Housing Plan". [6] But, as discussed below in relation to waste water growth prediction in the Drainage and Wastewater Management Plan (DWMP), this does not allow for the uncertainty of plans with allocated land or individual housing developments where there is land allocation; planning permissions "in the pipeline" or ones that have been submitted and not yet approved and so on. The water companies are not always consulted on developments by the Local Planning Authority as they are not 'statutory' consultees. And there is no indication that potential or actual development is actually taken into account in assessing the impact on waterbodies of increased sewage and water demand.

Water and sewage companies are consulted by local planning authorities in the drafting of their Local Development Plans (LDPs). But the clear lack of capacity demonstrates that this system does not work in accurately predicting demand and required supply.







# Drainage and Wastewater Management Plans

For sewage, the Drainage and Wastewater Management Plans (DWMPs) for the waste water industry assess current capacity and actions needed in 5, 10 and minimum 25-year periods considering risks and issues such as climate change and the impact of drainage systems on the environment and to develop options for mitigation. The plans are supposed to be “collaborative” (i.e. working with other sectors, such as local authorities).

How the water companies assess projected housing development is not always clear. Whereas the water companies do seem to take on board statistics from councils relating to their actual local plan allocations, it is not clear that account is taken of applications for planning permission that are still being consulted on, or, for instance, appealed decisions as well as forthcoming developments that are only at the pre-application stage.

We have examined, for instance, Southern Water’s DWMP. Detail is lacking – but it refers to “collaboration” with Local Planning Authorities. [7]

They also claim that there is discussion with other bodies to reduce the amount of surface water.

*“We know that the existing housing stock and infrastructure is the problem. Future development should not be. Local Planning Authorities are already working with developers on new developments to better manage rainwater. We have recently updated our sustainable development policy, which includes the following for developers: • Sewer connections – connections from new developments to foul or combined sewers for surface water run-off will not be accepted unless all options to separate surface water have been applied • Sustainable drainage – designs must include features to slow the flow of surface water run-off as close to the source as possible, for example, green roofs, permeable paving, rain gardens and water butts • Water recycling – incorporate rainwater capture and grey water recycling systems into designs, linking it to blue-green infrastructure and joining or establishing partnerships to eliminate rainwater from drains • Nutrient neutrality – to mitigate the expected increase in nitrogen and phosphorus from a new development so that they can become nutrient neutral. Specific developments in the Stodmarsh area in Kent and parts of South Hampshire and Chichester are required to demonstrate this. • Water neutrality – developments in Sussex North must demonstrate water neutrality for any new development with designs meeting 85 litres per person per day. Achieving this will require water capture, water re-use and off-setting by reducing water use in existing developments nearby.”*

**Quote source: Southern Water’s Draft Water Resource Management Plan**





The difficulty with this well-intentioned collegiate approach is that, although it seeks to reduce wastewater received at the sewage treatment works, it does not completely resolve the problem of capacity and does not provide certainty of outcome. It is good to see that there are drives for sustainability (e.g. separation of surface water and grey water) – but, again, there will still be excess sewage that needs treating. Nutrient neutrality principles (that for some streams and rivers protected under the Habitats legislation, development should only be approved where there is certainty that it will not cause adverse impacts on those waterbodies ) only apply to protected rivers and the law is now more fragmented and nuanced following changes brought in by the last government where listed protected river catchments will no longer be immune from development due to a presumption that there will be upgrades to receiving sewage works by 2030. [8] The principles of nutrient neutrality do not apply to most rivers – meaning that most are unprotected and do not benefit from Natural England’s advice.

The truth is that the water company’s role is highly reactive: it will respond to planning applications, indicating whether it has the capacity (though they are not always asked they are not a statutory consultee).

With Local Plans, which allocate land for development, the water companies will be consulted and the relevant information will be included in a “Sustainability Appraisal” [9] that will inform whether the Local Plan is approved.

The degree to which water companies take into account housebuilding in terms of demand is difficult to say. As part of the Price Review [10] process in 2024, Ofwat contacted 11 water companies to ask them what sort of expenditure would be necessary to expand resources to meet growth targets. The answers from the water companies included the capital investment over the projected years as well as operational expenditure, details of what the money would be spent on, the drivers for investment and the predictions for population. But it is unclear how much the predicted population figures related to the number of planning applications submitted and awaiting decisions or those that have been permitted and awaiting development or even which ones may be applied for in the future including land earmarked as part of the allocation process for LDPs. [11]

# Abstraction, Sewage, Planning and Development

The Government has confirmed its determination to meet targets for development after what it sees as a long period of failed planning policy to provide houses for a growing population. The Government has amended the National Planning Policy Framework (NPPF) in order to accelerate the development of housing. That includes amendments to accelerate the building of 1.5 million new homes with mandatory requirements for Local Planning Authorities (LPAs), clarification on the “presumption” in favour of development, all without proper controls over protections for the environment. [12]

When a large housing estate is constructed on land where new infrastructure is required to provide water supplies for domestic use, there are real consequences for the Water Resources Management Plan or indeed in the Local Development Plan; planning committees or even a PINS inspector may well never consider such issues.

## The views of 26 different councils

In the context of these concerns, in August 2023, WildFish wrote to 35 Local Planning Authorities (LPAs) with chalk streams within their areas. We asked them for details as to how or indeed whether they took into account capacity in their consideration of planning applications. We also asked whether they used planning conditions to ensure that capacity is linked to the permission.

We received substantive responses from 26 of the LPAs. Some refused to provide detailed information – partly because they saw questions such as whether capacity is a material consideration as simply an “opinion” or that this information was “not held”. Overall, there was a surprising lack of consistency: capacity was “not a material consideration” (Fareham Council); it could be a material consideration; it was always a material consideration; it was material consideration depending on the context (presumably the number of houses). Some councils, such as Ashford, went as far as to say that new residential and commercial development would only be approved where there was capacity.

Distilled from their responses is the fact that the trigger points for when the councils actually consult water companies where there is a planning application differed and were sometimes based on scale (“major developments”); some referred to the obligation to connect to the sewer for new development. “In appropriate cases” was the reply from one. Others indicated that they would consult on a case-by-case basis. Havant suggested it had been told by Southern Water to only consult it where there were 20 or more homes planned; one seemed to restrict the issue of whether it was “material” or whether it consulted on the fall back that nutrient neutrality must be demonstrated (though no indication as for other possible impacts on other rivers). Because water companies are not statutory consultees, that obviously adds to the variation in response.

Interestingly, a number of councils explained that they consulted the water companies in putting together their Local Plans or were themselves consulted when the water companies drafted their Water Resource Management Plans.

As for the use of conditions to apply a check to development depending on capacity, there was little consistency (though some suggested simply that we should look at their planning section on their various portals to determine the answer). There is no indication that Grampian conditions are used to ensure that there is sufficient water resource capacity.

**See Appendix 1 for the full details.**



The NPPF (particularly at Chapter 3) requires that the Strategic Policies required for the Local Plan should “set out an overall strategy for the pattern, scale and design quality of places (to ensure outcomes support beauty and placemaking), and make sufficient provision for: . . . b) infrastructure for transport. . .waste management, water supply, wastewater. . .”. (para 20 NPPF).

But time and time again, we find that local plans contain only high level policies which make little difference to the status quo. They do not, for instance, uniformly require that planning is refused if there is insufficient capacity. In any event, the NPPF does not demand more than the council should “make sufficient provision”. [13]

But that is just at the local plan level which differs from council to council. It is at the planning application stage that decisions are made that can make or break an already strained system.

The Government Planning Guidance “Water supply, wastewater and water quality” refers to higher level plans and also to individual planning development applications. It requires engagement with the EA and water and sewage companies “where water and wastewater issues need to be considered.” it suggests that the issue should really be left to higher level strategic policies which “can be reflected in water companies’ water resources management plans” therefore, “Water supply is therefore unlikely to be a consideration for most planning applications.” The Guidance recognises that for water quality, it is “only likely to be a significant planning concern when a proposal would. . . affect water bodies, for example... through a lack of adequate infrastructure to deal with wastewater”. But the way to resolve this, particularly where there is inadequate capacity, seems to be through “focus for ensuring that investment plans of water and sewerage companies align with development needs.” – but it is not clear how this alignment can happen as clearly there is a problem at present with linking the two together. [14]

For each development, there may not have been sufficient consideration of water supply in the assessments conducted by developers and councils informing whether a development should be approved. That means that this issue may well have been omitted from the Environmental Impact Assessment or, where the development is likely to lead to increased abstraction from or near to a protected site, there may well have been little scrutiny through a Habitats Regulations Assessment or a full Appropriate Assessment under the Habitats Regulations/HRA/AA process – despite the fact that these processes of scrutiny can be mandatory. Furthermore, there is too much wriggle room and discretion for the planners to vaguely require that capacity is taken into account – but not that it should determine the outcome.

Equally, the council cannot rely on the WRMPs from water companies to understand whether there is capacity, partly because the WRMPs do not deal with the details of individual developments and will be out of step with planning applications. [15] Additionally, the implementation of WRMPs is often not as originally planned; for example, the timing of the provision of crucial, long-term measures to meet demand is often seriously delayed.

But the increase in demand for water is obviously material to the grant of planning permission and the process of approval including scrutiny by planning committees and planning officers.

Like issues of pollution, the abstraction of water has the potential to cause significant impacts on rivers and their wildlife and – again obviously – should be one of the issues considered when deciding whether to grant planning permission for any domestic and/or industrial development.

Although nutrient neutrality has a statutory footing to protect sensitive sites, water neutrality is a relatively new concept and its application has so far been narrow. For instance, Natural England has published an advisory “Position Statement for Applications within the Sussex North Water Supply Zone September 2021” [16] which says that for all applications which fall within Sussex North’s Water Supply Zone, they must demonstrate water neutrality.

But there is limited evidence that such requirements have been advised elsewhere and this does not, of course, affect abstraction within non-sensitive sites which may still be over-abstracted due to development. That does not, though, remove the requirement for LPAs to take into consideration the impacts of abstraction on local waterbodies.

One crucially important issue is that water companies are not statutory consultees in the planning process and whether the water company is consulted is entirely discretionary. The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out which bodies should be consulted as set out in the schedules. But the water companies are not included.

## Water company duties to comply with water mains and sewer requisition

Where new infrastructure is required to provide water supplies for domestic use, the availability of water resources is not always properly considered by planning authorities, despite the real strain increased abstraction may have on riverine ecology, including waterbodies protected for nature conservation purposes.

Section 41 of the Water Industry Act 1990 requires the water undertaker to provide a water supply to new development (see section 41 (1) (b) (ii)). There is no suggestion that the water company could refuse to connect where there is insufficient water resource capacity and there is the possibility of environmental damage being caused by further abstraction. So, even if the water company believes that it will not have sufficient water to meet the supply, it will still need to connect.

Of course, a major part of the problem is a lack of forward-thinking by Ofwat and the water companies in setting out properly achievable alternative sources for water or means of reducing use. But if that part of the equation has not been resolved, the water company is still under the s 41 duty to connect up.

There are parallels with the foul water obligations for water companies. Some developers argue that because of the legal obligations on water companies to treat waste, the question of sewer capacity is not a material planning consideration.

There is a reluctance to impose conditions to protect the environment from sewage pollution partly because of the case of *Barratt Homes v Dwr Cymru* [2009] UKSC 13 where the Supreme Court confirmed that section 106 of the Water Industry Act 1991 provides a right for householders to connect to the sewer network and that, only in narrow circumstances, can the water company refuse such a connection. WildFish has seen evidence that one council, for instance, seems to think that they cannot impose a condition on the grant of planning permission for new houses preventing the houses from being occupied until it can be shown that there is adequate capacity in the sewage network because the water company is obliged to link the houses up to their sewage system. If the water company simply repeats that this is its legal position, you can't hold back the tide.

Ofwat is doubly to blame here: in addition to failing to properly oversee the water companies' approaches to growth and making sure that there is sufficient capacity, it has ruled in previous appeals from developers that the lack of capacity is not a good reason to refuse connection to the sewage system. [17]

But this is not the case north of the border in Scotland. There, the relevant statute – the Sewage (Scotland) Act 1968 contains a much more sensible section, derived from older public health legislation. It provides that the public authority (Scottish Water) can refuse permission for the connection. And, even if the development is to go ahead, the Water Industry (Scotland) Act 2002 and the Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2015 require that money is paid by the developer, to upgrade sewers to meet demand. This is not the case in England and Wales.





# The use of planning conditions

The present situation is that a local authority can impose conditions on the grant of planning permission that require that the question of capacity is dealt with. In the Barrat case the court said that “If the developer indicates that he intends to deal with the problem of sewerage by connecting to a public sewer, the planning authority can make planning permission conditional upon the sewerage authority first taking any steps necessary to ensure that the public sewer will be able to cope with the increased load (para 43. Supreme Court Judgment)”.

For instance, the condition could require that there be no development or occupation until an evaluation of the public foul sewerage network or that it should be aligned with the delivery by the water company of sewerage network improvements.

The problem with this position (that it can be dealt with in the planning system) is that it creates a real burden for councils in deciding on, policing and discharging the conditions in a context where they are reminded as per Barratt, that whatever the conditions say, the developer has the right to connect, irrespective of capacity.

But the responsibility for setting conditions like these is not without its difficulties: the results are inconsistent with only some councils using them; on the other hand, it may be unlikely that there is the will from councils to enforce them. Developers can apply to amend or even discharge them before there is certainty of capacity. There can also be serious misunderstandings with developers and water companies when it comes to signing off.

For instance, WildFish identified in a recent case in Buckinghamshire that the local council granted planning permission for 170 new homes. But it also imposed conditions that there should be proper assessment and agreement with the water company before construction should begin – and imposed a condition requiring that capacity be confirmed before occupation. Although the water company said it did not have the capacity at a local sewage works to take more sewage from the new homes, the council and even the water company argued that the water and sewage company was bound by law anyway to link the estate up to the system. That meant that the LPA took this as a signal that the development could go ahead. WildFish subsequently discovered that Ofwat had refused the investment targets for the relevant sewage works, meaning that if the development goes ahead, the local sewage capacity will be exceeded. [18]

In general, WildFish would venture that it is better that decisions on whether there is sufficient capacity and, therefore, whether the development should be able to proceed is probably not a question for councils to adjudicate, especially water companies which feel they are bound to accept connection to their sewage and water supply system and remain immune to concerns of enforcement from an underperforming EA for allowing discharges from overwhelmed sewers into rivers and streams. That is why WildFish has recommended that the law be changed by amending the Water Industry Act 1990 to allow water companies to refuse to connect when there is no capacity. This takes the responsibility away from non-specialist councils and puts the onus on the developer to only make applications where capacity is present.



# WildFish's Proposal

We have advocated elsewhere for the long-term plans for water resources published by the water companies to be tightened up and for the regulators to do their job properly in preventing pollution from occurring.

But we also believe that there is a simple way of ensuring the link between supply and demand is always maintained. WildFish believes that the current web of law can be made to work – with only a few tweaks:



## 1. Guidance and Policy

Firstly, the NPPF and the Government's Planning Planning Guidance "Water supply, wastewater and water quality" should both be updated to say in plain terms that councils should examine all housing developments in terms of the pressure on the sewage and water resources systems. The policy should also advise that planning permission should be refused if it cannot be demonstrated that there is sufficient capacity.

Specifically, water supply and sewerage capacity should be included within footnote 7 in paragraph 11 of the NPPF, to make clear that these matters are capable of providing a strong reason to refuse planning permission.

There should also be an amendment to paragraph 20 NPPF, under the heading "Strategic policies" which lists the required considerations: after the words, "infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat)", should be added "... "The plan should confirm, where there is no capacity for further development based on current water resources and sewage infrastructure, that planning should not be approved. Strategic policies and plans must take into account natural resourcing based on the relevant water companies' Water Resource Management Plan or plans covering the local area.



## 2. Statute

We also believe that the Water Industry Act 1991 should be amended to allow an exception to the right to connect to public sewers when there isn't capacity:

### Section 106

Section 106 provides the right for new development to connect to public sewers. We suggest the following amendment:

In section 106(4) of the Water Industry Act 1991 (right to communicate with public sewers), after paragraph (b) insert—

“(c) the predicted or actual volume of sewerage to be discharged into the public sewer would exceed the capacity of sewerage infrastructure.””

### Section 41

Section 41 of the Water Industry Act 1990 requires the water undertaker to provide a water supply to new development (see section 41 (1) (b) (ii)). WildFish suggests that this is amended to allow for the developer to refuse where there is insufficient water resource capacity and there is the possibility of environmental damage being caused by further abstraction.

### “Duty to comply with water main requisition

(1) In section 41 of the Water Industry Act 1991 (duty to comply with water main requisition), after subsection (4) insert—

“(4A) The duty to provide water under this section shall not apply to provision for a proposed new development where the water undertaker has notified the developer and the planning authority that—

(a) it does not have sufficient water resources available, or

(b) it believes that the provision of water to the new proposed development would be likely to lead to unacceptable damage being caused to a protected site.”

## 3. Town and Country Planning (Development Management Procedure) (England) Order 2015

The Town and Country Planning (Development Management Procedure) (England) Order 2015 lists the appropriate statutory consultees for particular kinds of development. This should be amended to ensure that water and sewage companies are consulted on all new residential developments.

It is possible for this also to be included in the Guidance to ensure that there is no ambiguity or discretion for local councils.

## 4. Paying for the upgrade

Lastly, we believe that it is worth considering at least that the developer should be made to pay the water company to upgrade the local sewer to meet the extra demand. That could be done through secondary legislation as it is in Scotland (Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2015). Or it could be achieved by amending section 106 of the Town and Country Planning Act 1990 so that payments can be made by developers to water companies as parties to the contracts. [20]

# List of references

[1] Government website | [Plan for Water: our integrated plan for delivering clean and plentiful](#)

[2] Financial Times | [Raw sewage discharges in England and Wales hit record](#)

[3] Government Press Release | [More action needed to protect future water resource](#)

[4] BBC News | [Scale of building challenge revealed by BBC housing tracker](#)

[5] A good example is where the EA may well conclude that permitted discharges from sewage works are causing a deterioration of the condition of a river under the Water Framework Directive. The most obvious remedy is to change the permit to force the sewage company to apply higher standards of treatment. But what tends to happen is that it is left to Ofwat to strike a bargain with a company to tighten the permit conditions as part of its agreed investment. But this takes too much time and, meanwhile, the company may be breaking the law in failing to treat sewage effectually.

[6] Southern Water | [Draft Water Resources Management Plan 2024](#)

[7] Southern Water | [Drainage and Wastewater Management Plan](#)

[8] Ss 168 and 169 and schedule 15 of Levelling up and Regeneration Act 2023 amend the WRA 1991 and the Conservation of Habitats and Species Regulations so that for sensitive rivers listed in a ministerial letter by the Secretary of State, sewage plants will need to be upgraded by 2030, allowing a presumption that planning permission for new development should go ahead.

[9] The requirements are set out in s 19 Planning and Compulsory Purchase Act 2004.

[10] The Price Review is a process by which Ofwat decides how much – and where – money will be invested to meet demand which leads to approved or determined Business Plans for each company. Our most recent is PR24.

[11] See, for instance, the “Growth at Sewage Treatment works” document prepared by Ofwat as part of the PR24 process. Although the document deals with the water company’s predictions for population and required sewage infrastructure upgrades, it is not clear that these particular upgrade figures for particular investments are binding ([see more](#)).

[12] “Proposed reforms to the National Planning Policy Framework and other changes to the planning system (2 August 2024)”.

[13] Paragraph 20 (b) of the NPPF says that Strategic policies should set out “an overall strategy for the pattern, scale and design quality of places and make sufficient provision for. . . b) infrastructure for. . . water supply, wastewater. But this is high level and arguably it is too vague to be useful in making sure that there is sufficient supply to meet demand increase for particular developments;

[14] The courts have already noted that there needs to be a closer relationship between the regulatory infrastructure and the planning system. Lord Phillips approved LJ Carnwath’s view that “more thought may need to be given to the interaction of planning and water regulation systems under the modern law to ensure that the different interests are adequately protected” *Barratt Homes v Dwr Cymru* [2009] UKSC 13 [para 58]. But that is not what is happening in practice.

[15] See, for instance, the Draft Water Resources Plan for Southern Water, para 8.2, “The HRA of the draft WRMP24 provides a strategic, plan-level assessment to support the WRMP. It is not an application-specific (“project” level) assessment. A more detailed, project-level HRA (with Stage 2 Appropriate Assessment where required) will be needed to support any actual planning application and environmental permit or consent.  
<https://www.southernwater.co.uk/media .pdf>

[16] Natural England | [Position Statement for Applications within the Sussex North Water Supply Zone](#)

[17] See, for instance, reference to an appeal by the Post Office to a refusal by Yorkshire Water to connect – discussed at paragraph 46 of *Barratt Homes v Dwr Cymru* [2009] UKSC 13

[18] See Appendix 1

[19] WildFish | [Environment Agency Report](#)

[20] The water and sewage companies in England can charge for connection. But this does not include upgrading sewage works where there is insufficient capacity. See for instance: [Charging Rules for New Connection Services \(English Undertakers\)](#)



## Appendix 1: Local Planning Authority Responses

In August 2024, WildFish wrote to 35 Local Planning Authorities (LPAs). We received substantive responses from 26. Their responses are [viewable here](#).

## Appendix 2: Buckinghamshire Council: a case study

WildFish has recently been active in challenging the decision to remove conditions preventing a 170 home development in Maid Moreton, a village outside Buckingham.

To the south-east of the site lies the Buckingham sewage treatment works or water recycling centre which would receive waste-water for treatment for the site. The Buckingham STW discharges to the Great Ouse via a ditch.

The Great Ouse flows to the south-east of the site. One of the longest rivers in England, although the underlying geology near Buckingham is limestone, there is a chalk substrate towards the south-east of the catchment. The Great Ouse catchment holds seven Ramsar sites, three Special Protection Areas (SPAs), 11 Special Areas of Conservation (SACs) and 241 Sites of Special Scientific Interest (SSSIs).

As a waterbody for the purposes of the Water Framework Directive (WFD) it is currently failing environmental standards with a WFD status of "poor".

Planning permission for 170 houses was granted (ref 16/00151/AOP ) in March 2022, subject to restrictions in the conditions which required that sewer capacity be demonstrated before development begins.

But the developer applied to have the condition amended to allow it to build the homes even after Anglian had said it did not have capacity, whilst admitting that it would not be able to refuse connection.

The developer also made applications to discharge the planning permission conditions. The water and sewage company – Anglian Water – continued to maintain that there was insufficient capacity but suggested that it was bound, when notified, under s 106 Water Industry Act 1990, to connect the development up to the system. The water company's apparent concession that it was bound to connect – illustrates how the planning system can be undermined by the legislative framework.

One of the arguments run by the council and the developer was that the expected sign-off of investment by the water company by the regulator, Ofwat, means that the capacity issue is now resolved. But it is not clear that this is the case.

The case goes to show that there is no security provided by such conditions as the developer can apply to have them varied and, in the confusion, may be granted that variation or a discharge of a condition where capacity is still not certain, especially where the water company feels bound to accept the new increase in volume to its sewage infrastructure.

It is also difficult for local planning authorities to apply conditions that are at odds with the rights of connection promulgated in statute.

WildFish subsequently obtained information from Ofwat that the investment proposals for Buckingham STW had been refused on the basis that Anglian had already been assigned money from customers to meet its compliance duties and that no further money would be granted – despite the need to meet population growth.