TOWN AND COUNTRY PLANNING ACT 1990

LAND AT CHICHELE ROAD, OXTED

APPEAL BY CALA HOMES (SOUTH HOME COUNTIES) LTD

PINS REF. APP/M3645/W/24/3345915

PROOF OF EVIDENCE

FLOOD RISK AND DRAINAGE

OXTED & LIMPSFIELD RESIDENTS GROUP AND OXTED PARISH COUNCIL

EVIDENCE OF: MICHAEL HURMAN

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1. My name is Michael Hurman, and I reside on Chichele Road, obliquely across from the proposed site entrance. I will explain here why I am deeply concerned that this proposal will significantly exacerbate existing surface water and foul drainage problems downstream of the proposed development and at the proposed site access.

Existing surface water flooding issues

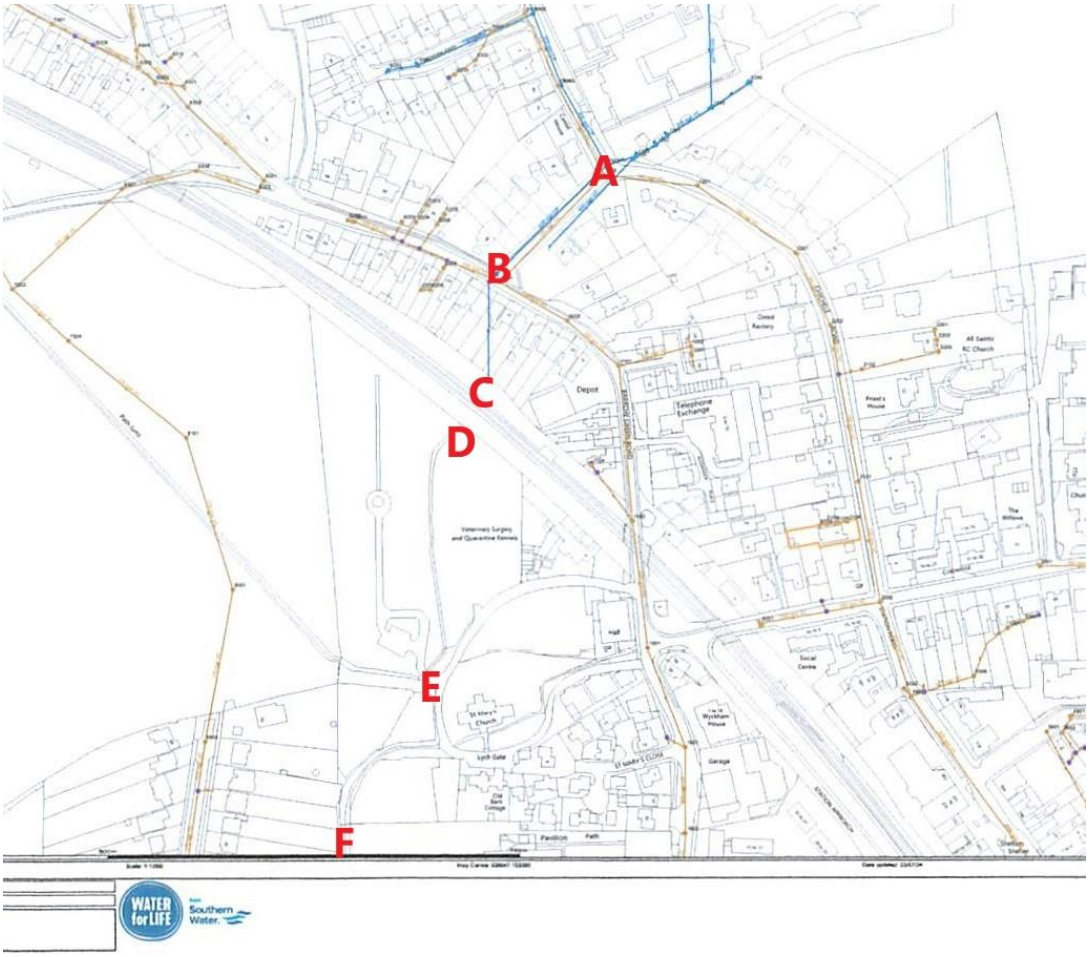
2. The desktop-based surveys relied on by the Appellant use outdated Environment Agency flood risk mapping (FRA Appendix K part 1: EA/NRW Surface Water 30 Year Return Depth Map, 1:10,000). These do not reflect the situation on the ground today. This proof will provide examples of both surface and foul water flooding and overflows which show flooding events occur far more frequently than 1 in 30 years, that the existing system is already at capacity, and adding 116 new dwellings will only exacerbate the problems that currently exist.

3. Over the past sixteen years, I have witnessed several surface water flood events at the Chichele/Silkham Road junction. I have also witnessed the resulting downstream effect of surface water flooding the foul water combined drainage system, with water depths reaching approximately half a metre on Barrow Green Road. I have spoken to residents affected on Barrow Green Road, they confirmed

that internal flooding has occurred in neighbouring homes, as well as damage to external areas and gardens. I enclose photographs of a recent flooding incident later in this proof.

4. The Head Teacher of St Mary's Primary School, Mrs Lewis, stated in her objection to the application (9 January 2024): *"the area of our school site adjacent to the proposed development is prone to flooding. We have concerns that the proposed development would increase the flow of water into the culvert, which is already beyond capacity, and increase the flooding risk to our school buildings."*

5. As can be seen from the plan below, produced by Southern Water and annotated by me, the 525mm surface water drain serving Chichele Road (marked A-B) runs behind the houses in Barrow Green Road (marked C) into a culvert which goes under the railway line (marked D). This empties into another culvert running beside Oxted Burial Ground and Master Park to the rear of Wheeler Avenue (marked E-F). In heavy rain conditions, that culvert floods. The lines in blue are the surface water drains, the lines in brown are foul water.



6. The following photographs show surface water flooding in August 2024 coming from the culvert referred to above.

The existing 400-525mm surface water drain, flooding the Chichele/Silkham Junction August 2024. St Mary's School can be seen on the right.

Floodwater from Chichele Road then flooded Barrow Green Road, with residents stopping traffic and trying to keep the drains unblocked. August 2024.

The drainage system along this stretch of Barrow Green Road is, I understand, an old Victorian combined surface and foul water system, where road surface water drains into the 150mm diameter foul water pipe. During heavy rainfall, this small capacity system is overwhelmed by the surface water running off Chichele Road, leading to flooding.

The existing piped surface water element from Chichele Road then continues further downstream (adjacent to Master Park) and regularly floods onto Wheeler Avenue and properties along it. The photos show floodwater from the culvert which has overflowed and inundated properties there in August 2024.

7. These are not just isolated incidents. The Environment Agency's surface water map suggests that flooding is a rare event, occurring only once every thirty years. However, my evidence demonstrates that both flooding and overflows in this area are far more frequent, occurring even in the height of summer.

8. I would like to highlight that all of these events occurred without the added upstream burden from the proposed 116 dwellings. I believe that any future flooding and overflow will be worse, all year round, should the development be constructed. The 100m site access road surface run off is not captured by SuDs and will surely have an added downstream impact.

9. My concern is that the proposed minimum 300mm SuDs overflow Freeboard indicates that overflows are inevitable. Any overflows will cause widespread and unacceptable downstream impact on highways, road users, dwellings and gardens. These impacts will be made worse by the fact that part of the network is combined

surface and foul water, which means that overflows can also contain foul water. I consider that a substantial increase in overflow provision is necessary to make the development acceptable.

Foul water capacity and overflows

10. The overflows in the existing foul drainage network in this part of Oxted are well known, with properties near Chichele Road requiring the installation of non-return valves by Southern Water in May 2022 to prevent foul water overflows into their gardens and dwellings. Non-return valves are installed to prevent water flowing back towards a property in flooding situations and to prevent foul water entering a property via toilets, sinks and other waste pipes.

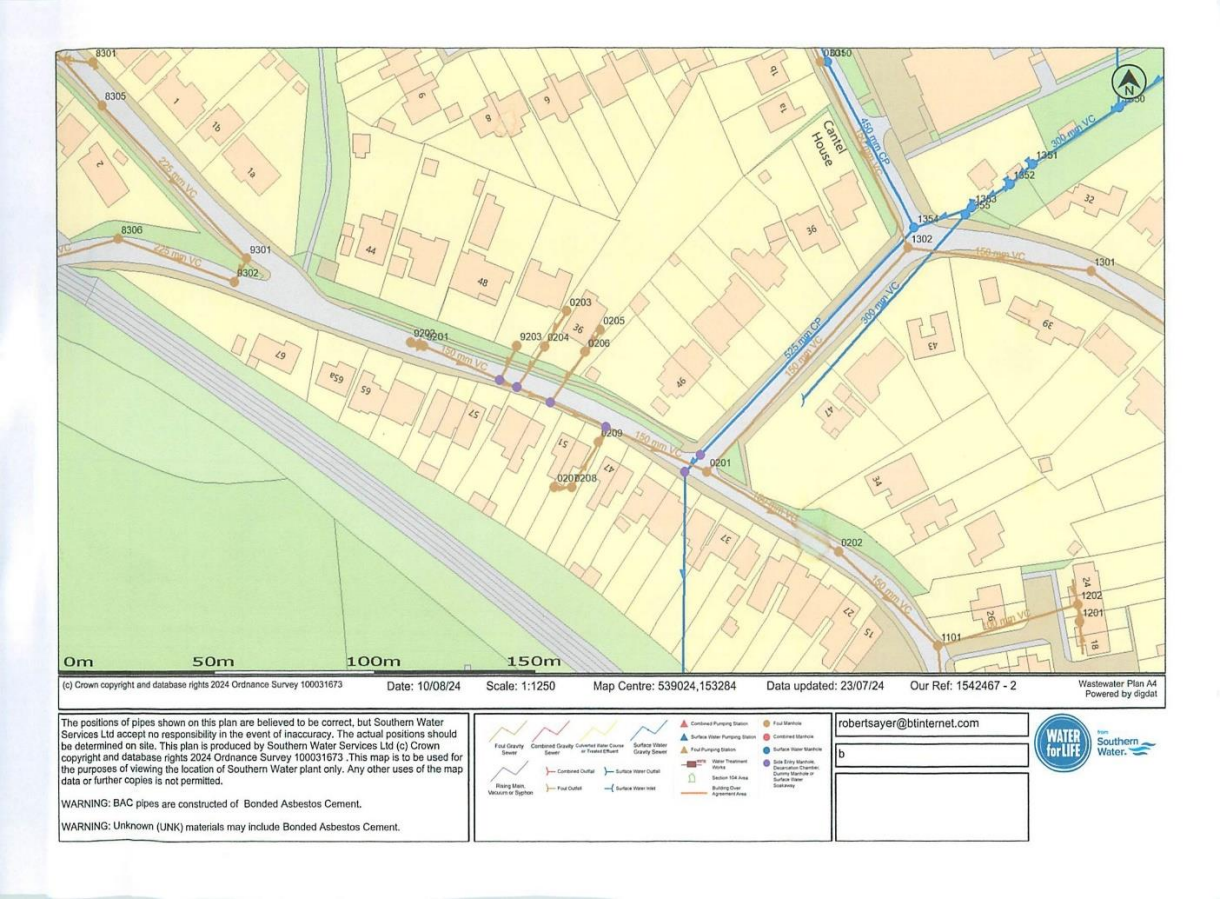
11. The installation of these non-return valves followed repeated incidents of flooding from sewage owing to lack of existing network capacity. Mr Nicholas Sumner, a Gordons Way resident who suffered a number of these incidents, informed me that he received a compensation payment of £5,000 from Southern Water due to these problems, in addition to the installation of non-return valves. I understand the installation of non-return valves in Gordons Way has simply pushed the problem elsewhere on that network with other properties in other roads now being flooded with sewage.

12. The issues mentioned above are in the Gordons Way network but as you can see from the plan below, the foul water pipe serving Chichele Road leading to Barrow Green Road is just 150mm in diameter, while the foul water pipe serving Gordons Way to the west is larger, it is 225mm in diameter.

13. The proposed plan to link the foul water sewage outfall from the development to the 150mm pipe on Chichele Road would increase the load on the existing network by 43%, based on adding 116 new homes to the existing 271 homes that currently use the pipe.

14. As explained, it appears the system is already operating beyond capacity even with a 225mm pipe. It is common sense that the smaller Chichele Road foul water pipe

will overflow and flood properties downstream due to the significant increase in the volume of foul water arising from the proposed development.



15. I note that the appellant's FRA recognises that capacity constraints will need to be checked with Southern Water (paragraphs 2.37, 7.2 and 7.6) but I have not seen anything to suggest this has happened.

16. In the circumstances I have set out, planning conditions must be imposed which prevent the commencement of the development until such time as the undertaker has upgraded the system to cope with the additional load. Please see Southern Water's suggested Grampian condition in the briefing note at Appendix 1. The imposition of and compliance with these conditions is non-negotiable. If such a condition is not imposed, planning permission should be refused.

17. I would like to add my own personal experience of a foul water blockage outside my house that occurred a few years ago. This is relevant because I live across from the

proposed new site access and so what has previously occurred is likely to occur at the proposed new access.

18. A blockage caused foul water to leak out of the D400 manhole cover sited on the Chichele/Silkham Road junction. This continued for a few days with water being splashed regularly by passing traffic onto the pavement and draining into the nearby downstream surface water manhole. I initially thought it was a water leak, so I emailed Southern Water, who found it to be foul water. They organised for the relevant vehicle a day or so later to pump and clear the blockage.

19. Adding 116 new dwellings to what is an already overloaded system will inevitably cause similar problems in the future, both at the proposed access to the site and also to nearby dwellings and gardens.

20. Furthermore, the proposed highway alterations, including the installation of three raised road tables, could exacerbate the situation further by creating pools of water, some of which could infiltrate through the D400 foul water drain manhole covers. This would cause flooding and overflows of foul water.

21. Any flooding, particularly where it involves foul water, of the proposed access will adversely impact both the new residents of the proposed development, existing residents nearby, and any road users, cyclists, pedestrians, including the children who attend the local schools.

Conclusion

22. For the reasons given here, I consider the appeal proposal is contrary to paragraph 173 of the NPPF 2023 and to development plan policies CSP11 and DP21. I also believe that the harm arising from both surface and foul water flooding should be added to the list of “any other harms” (NPPF paragraph 153).

23. Given the increased risk of downstream surface and foul water flooding, damage and risk to health that this proposed development poses, I respectfully request that the appeal is dismissed.

Appendix 1

Briefing Note
For LPAs on Infrastructure Provision

Southern Water's interaction with the planning system in the context of the Water Industry Act 1991

Purpose

To explain Southern Water's rationale regarding the content of its responses on planning applications and how this relates to Water and Sewerage Company (WaSC) obligations under other legislation.

Southern Water looks to Local Planning Authorities (LPAs) to require developers to demonstrate in their planning application submission that there is adequate infrastructure capacity both on and off the site to serve the development and that it would not lead to adverse amenity impacts for existing or future users. Developers are strongly advised to liaise with Southern Water ahead of submission of any planning application. This can be done online using our Developer Portal https://developerservices.southernwater.co.uk/

Where Southern Water identifies infrastructure capacity issues and the developer indicates an intention to connect to the public sewer, Southern Water will ask the LPA to make any planning permission conditional upon the WaSC first taking any steps necessary to ensure that the public sewer will be able to cope with the increased load, through the use of planning conditions. The LPA can then determine any details submitted pursuant to such conditions in accordance with any views expressed by Southern Water. This condition will normally be "Occupation of the development is to be phased and implemented to align with the delivery by Southern Water of any sewerage network reinforcement required to ensure that adequate waste water network capacity is available to adequately drain the development."

The Legislation

All WaSCs have a legal obligation under Section 94 of the Water Industry Act 1991 (WIA 1991) to provide developers with the right to connect to a public sewer regardless of capacity issues. This, in conjunction with Section 91(1) of the Act in effect makes it impossible for Southern Water to object or for the Council to refuse to grant planning permission for development on the grounds that no improvement works are planned for a particular area.

Due to this legal right to connect, Southern Water will request conditions on the grant of planning permission. This is intended to enable Southern Water to agree with the developer the drainage strategy, the preferred point of connection, allow for existing capacity to be considered and upgrading work to be programmed. Such an approach allows the legal right to connect to be sensibly managed prior to implementation.

Some developers may argue that due to the legal obligations placed on WaSCs under the WIA, sewerage or wastewater treatment capacity for development is not a material planning consideration. The case precedent is a Supreme Court decision in Barratt Homes v Welsh Water. The court held that the developer has an absolute right to connect to the existing sewer, whether or not this overloads the system. It ruled that the specific wording of the legislation allows for this right to be exercised, at no cost to the developer apart from normal connection charges.

Southern Water has a statutory duty under section 94 of the WIA 1991 to plan and implement any works that are necessary to ensure the network of sewers (and sewage treatment facilities) continue to operate satisfactorily once they have received notification that a developer intends to exercise their right to connect under section 106 (1) WIA 1991. It is also accepted that there is a right for a development to connect under section 106 of the WIA 1991. Problems can arise however from the fact that the right to connect can be exercised on 21 days' notice - too short a period of time for the WaSC to ensure sufficient capacity exists. While advance notice can be given that a development is likely to be coming forward, until planning permission is actually granted, there is no certainty that this will be the case. Even then, practically speaking, there may be a delay in development commencing while information to discharge pre-commencement conditions is prepared and submitted.

Where local sewerage infrastructure constraints are identified, network reinforcements are delivered by the WaSC through the Infrastructure Charge to developers. Any larger, strategic infrastructure improvements (such as an upgrade of a WTW) are delivered through the 5 yearly business plan, which is funded through customer income and regulated by Ofwat. As a result, it is not always possible at the beginning of a five year period to plan for all works which may be required for the duration of the plan, given the changing nature of development activities and the planning process.

Nevertheless, whilst there is a separate statutory regime governing the provision of sewerage and wastewater treatment under the WIA, it does not necessarily take away the opportunity for the LPA to consider the potential impacts, and to ensure that those impacts are adequately mitigated before that development is undertaken, albeit that LPAs should not seek to "second guess" or duplicate the roles and responsibility of the utility company. However, there is an opportunity for the LPA to work in partnership with the utility company to ensure that new connections to the sewer are properly managed.

This opportunity is reflected in the National Planning Policy Guidance (NPPG), where it states in the section dealing with water supply, wastewater and water quality (Para 20) "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... 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 system have been carried out."

Use Of "Grampian" Style Planning Conditions

The use of planning system to impose Grampian conditions as being the appropriate means of dealing with this problem was affirmed in the Welsh Water decision. "The planning authority can make planning permission conditional upon there being in place adequate sewerage facilities to cater for the requirements of the development without ecological damage. If the developer indicates that he intends to deal with the problem of sewerage by connecting to the 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. .... ***Thus the planning authority has the power, which the sewerage undertaker lacks, of preventing a developer from overloading a sewerage system before the undertaker has taken steps to upgrade the system to cope with the additional load."*** (our highlight).

When consulted on a planning application, Southern Water will where necessary request that a Grampian condition is imposed upon the grant of planning permission, so that the potential risk of flooding to properties and/or environmental pollution can be mitigated in a timely manner. The recommended Southern Water condition should read: "Occupation of the development is to be phased and implemented to align with the delivery by Southern Water of any sewerage network reinforcement required to ensure that adequate waste water network capacity is available to adequately drain the development."

Conclusion

The purpose of Grampian style conditions is solely to enable Southern Water to manage the timing of connections to the public sewer so that it can comply with its statutory duties. It will allow Southern Water to agree a drainage strategy with the developer, the preferred point of connection, allow for existing capacity to be considered and upgrading work to be programmed. This allows therefore, the legal right to connect to be sensibly managed prior to occupation of the development.

In essence therefore, such planning conditions are requested only for Southern Water purposes. The LPA has no further purpose in pursuing such a condition and indeed should not place itself in a position of trying to "second guess" or duplicate the WaSC's decision on strategy or capacity. That is Southern Water's statutory responsibility and scrutiny of such decision making is not by the LPA but through the statutory regulatory body, Ofwat. Ofwat's duties are set out in section 2 of the WIA 1991 and include ensuring the long-term resilience of water supply and wastewater systems and that WaSCs take steps to enable them, in the long term, to meet the need for water supplies and wastewater services. The Council itself has neither the legal remit, capacity, experience nor access to the relevant network data to perform any informed overview function.

Relevant sections of the Water Industry Act 1991

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

Under section 94 (1) of the Act, sewerage undertakers have a duty to provide, improve, extend and make provision for the emptying of their sewerage systems by effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers that comprise the public sewerage system. The provisions of this section of the Act relate not only to long term capital works to improve the sewerage system generally, but also place a duty on the sewerage undertaker to react to changes in the level of discharges into their networks. In practice therefore, it is not possible to refuse to grant planning permission for developments simply on the grounds that no improvement works are planned for a particular area. The Act requires Southern Water to accommodate that development whatever the circumstances.

Section 106 – Right to Communicate with Public Sewers.

Developers have a statutory right to connect new sewers to existing public sewers under section 106 (1) of the Act and sewerage undertakers do not have the ability to refuse a connection on the grounds of capacity in the local sewerage network and/or sewage treatment works.

Section 112 – An Alternative to Works Under the Section 94 Duty

Whilst all developers and landowners have an absolute right to connect to the public sewer nearest to their premises, in some circumstances it may be the case that the sewerage undertaker requires drainage systems to be constructed in a manner which better protects the existing public sewerage and/or sewage treatment systems. It may for example be beneficial for a sewerage undertaker to require that a developer connects at an alternative location which constitutes a point of adequacy or provides onsite attenuation to ensure that new flows are only discharged at a specific rate or during certain times until such time as any issues with their systems have been resolved. Given the rights and duties under section 106 and 94 of the Act, it would not however be appropriate to expect a developer to pay for any additional works. Section 112 of the Act provides a mechanism for sewerage undertakers to compel a developer to carry out alternative works (s112(1)), but with the difference of cost being met by the sewerage undertaker (s112(6)).