

## **Joint advice to Local Planning Authorities: Non mains sewerage and new development proposals** (November 2020)

Anglian Water and Environment Agency

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### **Context**

All new development which is expected to be regularly occupied will require an effective method of foul drainage and treatment which protects both amenity and the water environment.

Within the Anglian Water company area, the majority of properties are connected to public sewerage network. The expectation is that in most cases new development proposals will connect to the foul sewerage network managed by Anglian Water.

There are a number of existing settlements and properties which are located at distance from existing public sewerage networks and which are currently served by package treatment plants etc. This joint statement has been produced to set out the common position of Anglian Water and the Environment Agency on non-mains drainage in Local Plans and planning applications in the Anglian Water company area.

### **National Planning Policy**

The National Planning Practice Guidance<sup>1</sup> states that the first presumption is for new development to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (operated by a sewerage undertaker). Package treatments plants can also be considered where connection to the public sewerage network can be demonstrated to not be feasible in terms of cost or practicability. Septic tanks are only considered to be acceptable where the other available options as set out above are shown to be unfeasible.

The foul drainage hierarchy as set out in national planning policy is as follows:

- Connection to public sewer
- Package treatment plant
- Septic tank

Please note that the use of septic tanks within the Anglian Water area is restricted to those areas that have a suitable permeable geology; this will be assessed on a case by case basis by the Environment Agency.

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<sup>1</sup> <https://www.gov.uk/guidance/water-supply-wastewater-and-water-quality>

## Water Industry Act 1991

The Water Industry Act 1991 (“the Act”) sets out the principal duties of Anglian Water as a sewerage undertaker for the provision of sewerage services.

Section 94 of the Act establishes two principal, but general duties imposed on Anglian Water:

- to provide, improve and extend the sewerage system to ensure that its area is “effectively drained”; and
- to make provision for the conveyance and treatment of that system’s contents.

The section 94 duty is not an absolute duty and is enforceable only by the Secretary of State or (as is more usual) Ofwat<sup>2</sup>.

More specific duties are contained in sections 98 and 101A of the Act. Section 98 imposes a duty on Anglian Water to provide a public sewer to be used for drainage of buildings for domestic and commercial purposes in its area. It is directly enforceable by the requisitioner.

Section 101A of the Act imposes a duty on the sewerage undertaker, including Anglian Water, to assess if the provision of a public sewer for the disposal of domestic sewerage from unserved buildings of a locality is the most appropriate solution; the assessment will only be made on properties whose current drainage is giving (or likely to give) rise to adverse effects on the environment or amenity.

Anglian Water has produced guidance for local communities who currently rely upon private sewerage systems and are currently experiencing problems who wish to apply to Anglian Water for provision of a new public sewer for existing domestic dwellings and domestic sewerage from commercial buildings. As outlined in the guidance Anglian Water will assess any applications in the context of S101A of the Act and the guidance issued by Defra on behalf of Secretary of State.

### Advice to Local Planning Authorities

- Options as high as possible up the foul drainage hierarchy (as set out above) should be selected by applicants and site promoters.
- Where a non-mains system is proposed, applicants should provide appropriate justification for this, preferably including a [foul drainage assessment \(FDA1\) form for the consideration of local planning authority and, in case of major development proposals, the Environment Agency](#). The Environment Agency’s guidance ‘Advice for local authorities on non-mains drainage from non-major development’ is available [on the Planning Portal](#).
- Anglian Water will provide details relating to costs of connecting a site to the public sewerage network where it is not currently served upon request from developers/site promoters. (There is a charge for providing this advice.)
- The outcome of any discussions should be included as part of the planning application documentation and form part of the Local Plan evidence base where a site is to be allocated.

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<sup>2</sup> Marcic v Thames Water Utilities Limited [2002] 2 All ER 55

- The Environment Agency will comment on the suitability of proposals involving the use of a non-mains foul drainage system in accordance with their operational guidance on this topic. At planning application stage this will be for major development proposals only. They are likely to object in circumstances where it may be reasonable for the development to connect to the public sewer if inadequate justification has been provided.
- Applicants and those promoting the inclusion of allocation sites in the Local Plan which are not proposing to connect to the public sewerage network should have early engagement with the Environment Agency in relation to the principle of non-mains drainage to serve the development proposal.
- Anglian Water should be contacted for further advice relating to costs of connecting to the public sewerage network prior to submission of a planning application or the identification of an allocation site in a Local Plan.
- Developers and site promoters can requisition a new sewer from Anglian Water to serve development proposals under Section 98 of the Water Industry Act 1991. The costs of which are met by the requisitioner.
- Applications for first time sewerage under the WIA 1991, can be made to Anglian Water where the current drainage is giving (or likely to give) rise to adverse effects to the environment or amenity, Anglian Water will then assess if it is appropriate to provide a public sewer for the domestic sewerage from the premises in question.

### **Advice from Anglian Water**

Further details of Anglian Water's Pre-planning service and how it can support applicants to develop effective drainage solutions is available to view at:

<https://www.anglianwater.co.uk/developers/development-services/pre-planning-services/>

Similarly, information about how to apply to Anglian Water for a first time sewerage system is available to view on Anglian Water's website:

<https://www.anglianwater.co.uk/developers/drainage-services/first-time-sewerage-system---s101a/>

In the event that an application is considered by Anglian Water to fail to meet the statutory conditions, they will write to the applicant and explain the reasons on which refusal is based. Where this is the case applicants can appeal directly to the Environment Agency.

### **Advice from the Environment Agency**

Details of the Environment Agency's planning pre-application services are available to view at <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>.

Package treatment plants and septic tanks may require an environmental permit in addition to planning permission. The granting of planning permission does not guarantee the granting of an environmental permit. Further information is available at <https://www.gov.uk/permits-you-need-for-septic-tanks>.