

Land at Mill Lane, Whitburn

Application No: 260049

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# WHITBURN NEIGHBOURHOOD FORUM

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## 1. Summary

The Whitburn Neighbourhood Forum **OBJECTS** to this application on the following grounds:

- The proposal conflicts with the policies set out in the National Planning Policy Framework (NPPF), the emerging local plan, and the Whitburn Neighbourhood Plan (WNP). The adverse effects of the development will significantly and demonstrably outweigh any benefits and is not sustainable development (as per NPPF 11dii).
- The application is premature and undermines the plan-making process, as the site was rejected during the local plan-making process, which is at its main modifications consultation stage. The scale of the proposal represents a substantial increase compared to Whitburn's population, constituting a level of growth not supported by required facilities. It significantly undermines the spatial strategy and coordinated planning of infrastructure. It should be refused as per NPPF policies 12 and 50.
- The proposal constitutes inappropriate development in the Green Belt, failing to meet NPPF policies 155 and 156.
- It is not in a sustainable location as evidenced by the government's connectivity tool, being beyond reasonable walking distance to key facilities. It will be car-dependent development. There are no adequate proposals to deliver the necessary infrastructure, including education, healthcare, sustainable transport and sewage capacity. The development cannot be made sustainable unless these facilities are provided, but no proposals are made to do so.
- The proposal fails to address the lack of educational and healthcare facilities in the local area.
- It fails to demonstrate sufficient sewage and drainage capacity.
- The proposal should be refused as per NPPF policy 193(a), as significant harm to biodiversity, including waders, cannot be avoided, mitigated or compensated for. The site includes a wildlife corridor and Green Infrastructure Corridor. The site was rejected as an allocation in the local plan due to its high biodiversity value. The proposed compensation strategy is insufficient, unproven and does not provide equivalent replacement habitat.
- The proposal will cause substantial and irreversible harm to landscape character.
- As per NPPF policy 139, the proposal should be refused as it fails to reflect the design policies of the Whitburn Neighbourhood Plan and is not well designed.

The Whitburn Neighbourhood Forum finds that the following information needs to be provided before any decision can be made:

- a) A transport assessment and travel plan that meet NPPF requirements on taking a vision-led approach to transport, with valid methods for assessment
- b) An agricultural land classification report
- c) The final green belt assessment
- d) We also request to review the Habitats Regulations screening and appropriate assessment, and the EIA screening report.

Further details on our objections are set out in the sections below.

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## 2. Sustainable Development

The proposal **does not constitute sustainable development**. The adverse impacts of granting permission outweigh any benefits. Granting permission would direct development towards an unsustainable location, and the proposed development is not well-designed. This means it is in conflict with **NPPF policy 11dii**. Furthermore, the proposal **conflicts with the Whitburn Neighbourhood Plan** and therefore with **NPPF policy 12**. The adverse impacts are set out in detail below on sustainable locations, transport, facilities and design.

The site is not allocated in the emerging local plan. The local plan is now at a more advanced stage than argued in the planning statement, as the hearings concluded before the application was submitted, and main modifications have been requested by the inspector. These main modifications are now being consulted on. The local plan assessed this site for development (SWH006), but the decision was made to reject the site due to its impacts on biodiversity (Site Selection Topic Paper); see below.

SWH006	Land south of Kitchener Road, Lizard Lane	Greenfield	This site is a prominent agricultural field in Whitburn village. The site falls within the Green Belt and is considered to perform relatively strongly against the Green Belt objectives. The site is in close proximity to biodiversity designations, an Area of High Landscape Value and also forms part of the local wildlife corridor. The 2019/2020 Wading Bird Survey identified the site as being a key site for Curlew. The sustainability appraisal identifies a number of significant negative effects against SA objectives including biodiversity, landscape, source protection zone, mineral workings, green infrastructure and efficient land use. The site is considered to be suitable and available in the SHLAA. The site has not been allocated due to potential significant impacts upon biodiversity.	<b>Reject site</b>	The site was assessed as falling within in an area of moderate harm in the Green Belt Study (2023). The Wading Bird Survey 2023 identifies the site as a key area for wading birds. The Whitburn Neighbourhood Plan identifies the site as falling within the Lower slopes of Cleadon Hills and the wildlife corridor. The site is not considered to be suitable or achievable in the SHLAA. The site has not been allocated due to potential significant impacts upon biodiversity.	<b>Reject site</b>
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No main modifications are proposed to sites allocated in Whitburn, which means the application site remains unallocated, and no main modifications are proposed to relevant policies that this proposal conflicts with. As the local plan is at an advanced stage, **NPPF policies 50b and 51 apply**.

The spatial strategy in the local plan ‘supports growth which respects the distinctive character of each village’ (**SP3.2**). Allocations within Whitburn are made for 71 houses. This proposal for 205 is almost three times as many houses as allocated. Due to the scale of the development, it will damage the character of the village, without proposing any enhancements that would mitigate the damage. The Local Plan positively plans to meet housing need over the plan period through a coordinated, plan-led strategy, including the release of Green Belt land in the most sustainable and deliverable locations. Allowing speculative development outside this strategy would undermine that coordinated approach and the integrity of the plan-led system. **NPPF policy 50** applies here, as the proposal is premature and **the proposal is so substantial it undermines the plan-making process** due to its scale (**NPPF 50a**).

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## 3. Engagement

The applicant asked the community for views in December 2025. According to the community engagement report, despite a large number of responses, no changes were made after engagement. This means the engagement was not meaningful and the community was not given a true chance to influence the development or its design. Therefore, no weight should be given to this engagement, as it conflicts with **NPPF policy 137**.

## 4. Green Belt and Grey Belt

The Green Belt Assessment is classed as a draft. We request that a final version is submitted and we are reconsulted on this to provide our comments.

The application site is in Green Belt, outside the current built-up area and settlement of Whitburn. The site has not been allocated in the emerging Local Plan. The Local Plan now has substantial weight, after it has gone through examination and main modification are being consulted on. None of these main modifications make changes to the allocations or the Green Belt deletions. The Green Belt assessment for the emerging Local Plan shows that removing the site from Green Belt establishes harm to the Green Belt purposes around Whitburn, which was designated to limit urban sprawl and prevent the coalescence of settlements. The emerging Local Plan explains that 'the Green Belt plays an important role in preserving the individual characters of settlements such as Cleadon and Whitburn' (2.60).

The NPPF contains policies on Green Belt and Grey Belt. The NPPF is clear that development in Green Belt is inappropriate, but only in certain conditions can it be deemed not inappropriate. Proposals need to meet all of the conditions set out in NPPF policy 155. This includes reference to 'grey belt', but also includes 3 other conditions. Furthermore, the NPPF is clear that development in Green Belt will also need to meet the Golden Rules, or further conditions, set out in policy 156. Again, all these should be met. The proposal does not meet all the conditions set out in 155 and is therefore inappropriate development, but it also does not meet all the Golden Rules and the planning application should be refused.

The proposal **fails policy 155 of the NPPF** that requires that all criteria (a-d) are met in order not to regard development in the Green Belt as inappropriate. Policy 155a requires that development would not undermine the purposes of Green Belt. As explained earlier development would affect the important role Green Belt plays in Whitburn. The applicant only refers to a percentage of Green Belt lost, however, the purpose of Green Belt is not linked to the scale of Green Belt, but to the contribution it makes to defined purposes. Taking this land out of Green Belt would undermine the purpose of the remaining Green Belt, as it will significantly affect the character of Whitburn.

Whitburn sits within a strategic gap between South Shields and Sunderland, as identified in the Local Plan's Green Belt Assessment, which remains up to date with the Green Belt Planning Practice Guidance as it defines the large built-up area as Tyneside (and excludes Whitburn village). The site (part of WH1) performs an important strategic function by preventing the unrestricted sprawl of the large urban areas. As the Local Plan's assessment confirms, its location between the large built-up areas of South Shields and Sunderland means it contributes to checking their sprawl. Development here would extend the influence of South Shields, eroding the integrity of the strategic gap and weakening the ability of the remaining Green Belt to prevent coalescence. This harm needs to be considered cumulatively with the Local Plan allocations in the same part of Whitburn.

**The proposal fails NPPF policy 155b**, which requires that development is in a sustainable location, assessed against policies 110 and 115. The applicant has failed to assess this for this specific site. The Green Belt assessment (3.23) only references the emerging local plan and its evidence base, but this plan does not allocate this site and provides no evidence of the sustainability of the location of the site. However, it is clear that the site:

- Will generate significant transport movements due to its scale. The proposed number of dwellings is almost three times that of the allocations in the emerging local plan, which means many more people will need to travel, and will need to travel further due to lack of facilities and will do so by car (see sustainable transport section).
- Is in an extremely poor location within England and South Tyneside. Its connectivity score from the Connectivity Tool (which is now referred to in the consultation draft of the new NPPF as a tool to assess the connectivity of locations of new development) is the second lowest band possible within South Tyneside (band I). It is also

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extremely low compared to the average in England and Wales, especially for health and education destinations, and especially for walking as a mode of transport to any destination. Walking to a health facility scores 29, while walking to an education facility scores 31. The true scores are likely even lower, as the map on the tool still shows the dentist, which has now left the village, with the nearest alternative significantly beyond a reasonable walking distance. It also does not take into account that the schools within walking distance are at capacity. Overall, the tool shows that this site is in the bottom 10% of connectivity for walking to all destinations in the whole of England and Wales (meaning that 90% of all land within England and Wales is better connected to destinations by walking than this site), and within the bottom 20% for all modes of transport to health facilities in England and Wales. As this is a government tool, it is clear that the government would not support development of this site. Development in such an unsustainable location is fundamentally inconsistent with the NPPF requirement to locate development in sustainable, accessible locations (**Policy 110 and 11diii**).

- The development does not limit the need to travel due to a lack of facilities nearby that people will be able to use. For instance, the only primary school nearby cannot take the additional required spaces needed, which will require people to travel further. They will not have a genuine transport choice, as the transport assessment predicts an increase in car use and does not assess walking or cycling. For an explanation on why the development promotes car use, see sustainable transport section) (in conflict with **NPPF policy 110**).
- The development does not have a transport vision. It prioritises car use. It does not propose any improvements that will enable people to walk, cycle or take a bus. It has not been designed in accordance with guidance on streets (such as Manual for Streets), or on design (such as the National Design Guide). This is in conflict with **NPPF policy 115**.
- Green Belt Planning Practice Guidance states that whether locations are sustainable should be determined in light of local context. The local context shows that the connectivity score is the second lowest possible in the local area. The scale of development (205 houses) is also significant, compared to the current population of Whitburn, and compared to allocations made in the emerging Local Plan. As the site is not at a reasonable walking distance from key facilities, while generating significant increases in demand for these services, the unsustainability of the location within South Tyneside and Whitburn should be given significant weight.
- The site cannot be made sustainable, unless a range of facilities and services are made available within 800m of the site.
- **As the site is not in a location that is or can be made sustainable, development on this land is inappropriate in Green Belt as per the NPPF and Green Belt Planning Practice Guidance.**

Furthermore, the development **fails NPPF policy 155d and it does not meet the Golden Rules**. It does not propose improvements to local streets, social infrastructure including schools, and to sewage infrastructure, even though this will be needed to ensure sustainable travel and meet WNP policies. For more detail see sections on transport, facilities and sewage. For instance, there is a lack of primary and secondary school places for new residents. No contribution from the developer will enable further spaces to be made available at Marsden Primary School (which is the only primary school within reasonable distance) and Whitburn Academy. There are no proposals to enable more spaces within the GP surgery, and no proposals to make available a dentist within Whitburn. There are no proposals to improve walking and cycling routes to Whitburn centre, Boldon metro station and other destinations to enable sustainable travel. No proposals are made to any walking and cycling infrastructure that were included in the Whitburn Neighbourhood Plan as necessary. As the proposal does not meet the Golden Rules it should be refused.

## 5. Sustainable Transport

The development is not in a sustainable location and cannot be made sustainable. It **conflicts with NPPF policies 110, 115a and 117a**. It does not reduce the need to travel and does not offer a genuine choice of transport modes. Due to the lack of everyday facilities nearby, including a primary and secondary school with capacity, a GP practice with capacity, a dentist, and shops that are more than a mile away. No proposals are made to encourage people to walk or cycle, and the proposal prioritises cars as set out in more detail below.

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The Transport Assessment is wholly inadequate. It does not follow a vision-led approach, but instead only predicts car movements. This is a predict and provide approach, which is the opposite to a vision-led approach as required in **NPPF policy 109** and defined in the NPPF glossary. No assessment has been made of any trips that are not made by car, and no assessment has been made of the quality and safety of routes that pedestrians and cyclists will need to take to the places they need to go. An assessment would show that the walking and cycling infrastructure around the site is not safe and not up to standard:

- Cycling infrastructure at Mill Lane is inadequate and conflicts with LTN1/20
- There is no pavement in parts of Kitchener Road and Lizard Lane, there is no lighting on Lizard Lane and a 40mph speed limit, making it unsafe for people.
- The claim that the pavement on the west side of Mill Lane is 3m wide is false as it is much more narrow to the north; a route from the site to Whitburn Coastal Park, which the developer encourages people to take to have access to green space.
- The informal crossing over Mill Lane near the playground is unsafe and a critical safety issue for people walking, wheeling and cycling, based on the recent government guidance, while the development will direct more people on this route towards the Coastal Park.
- There is a proposed new informal crossing with splitter island, again this is a critical issue and unsafe. Guidance (critical safety issues for walking, wheeling and cycling) is clear that on a very busy road with over 8,000 vehicles a day (which applies to Mill Lane), crossings should be controlled, or else they are unsafe to people and especially children, older people, people with mobility issues and with visual impairments.
- No improvements are proposed for walking and cycling routes around the development.
- There are no proposals for cycle parking at the houses. The Design and Access statement even claims that not providing dedicated cycle parking is a positive (p 97).
- The proposal is in conflict with **WNP3e** and **WNP14** that identifies walking and cycling routes for improvements, including on Mill Lane, Kitchener Road and Lizard Lane. The proposal is also in conflict with **NPPF policy 109e**, as it does not identify any opportunities to promote walking and cycling.

The assessment is using extreme walking and cycling distances. It twists statistics. The IHT document 'Guidelines for Providing for Journeys on Foot' is quoted, but this is from 2000 and instead government guidance, which states the government's official position and which is more up to date, should be used. The National Design Guide states that walkable is defined as 'Local facilities are within walking distance, generally considered to be no more than a 10 minute walk (800m radius)', while Manual for Streets also uses this 800m distance. Furthermore, the report states that according to the National Travel Survey (NTS), the 85th centile of people will walk 2km. This simply means that 85% of people will walk less than 2km. This is the maximum people would walk, not a distance people will walk regularly to go to the places they need to go to offer a genuine alternative to the car. To be able to give people a genuine choice of transport mode, an acceptable walking distance is 800 metres.

The assessment also only measures distances from the access of the site at Mill Lane and does not take into account the need to travel within the site, which can add five minutes to a walk, especially with the proposed layout; a walk that is only supposed to be ten minutes to local facilities.

It should be expected that people can walk to destinations they frequently need to travel to. It would be completely unreasonable to expect people to take a bus instead of making a short trip by walking and it is likely people will drive. The National Travel Survey shows that most trips over a mile were made by car with only a very small proportion taking the bus.

The Travel Assessment underestimates the number of trips that will be made by car. It only considers census data on Travel to Work from 2011, and it only considers AM and PM peak movements. From the National Travel Survey it is clear that commuting to work is only 12% of trips people make. Therefore, many more car journeys will be expected. The TRICS data is also inaccurate. It looks at existing housing sites to estimate car use of this proposal. The analysis includes housing developments at the edge of a town. It also includes developments with up to 50,000 people living within a mile of the site. Those sites included in the data are in large, built-up areas, which will have more transport choice and more facilities within walking distance. For example, one of the sites is in Derby with a high connectivity score compared to the application site. As a result, the data significantly underestimates the predicted car use for this proposal.

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The Travel Plan is inadequate and does not even have targets or propose measures to encourage walking and cycling to achieve a vision-led approach. A Travel Plan should be developed in order to achieve the vision and objectives for sustainable travel, which it clearly is not able to do, as the Transport Assessment lacks any vision or any measures to promote walking or cycling. It is impossible to meet any targets for sustainable transport modes. The proposal is in conflict with **NPPF policy 118**.

The street design of the development is inadequate. There are private drives that do not connect. A pedestrian or cyclist who wants to leave a private drive will have to make a detour as the street is not connected, and it is not possible to go on the footpath using an accessible route for people of all ages and abilities. This design prioritises cars over pedestrians and severs connections within the development. The layout is illegible, especially for people with visual impairments. Together with the lack of dedicated, convenient and secure cycle parking, this fails **WNP3e and NPPF 117a**.



*Image showing disconnected streets that prioritise cars and car parking, forcing pedestrians to make detours in blue and red to be able to get to footpaths.*

There are no assurances made that the proposed leisure path will be a safe, inclusive and accessible path suitable for walking and wheeling at all times (including in the winter and in the dark) for all users. There is no information on the surface material used. Moreover, more pedestrians will use Lizard Lane. This is an unsafe route, with a 40mph speed limit, and pedestrians travelling north will be forced to cross on a blind corner where the pavement ends and forced into walking on the road where there is no pavement at all. There is no lighting. Pedestrians will not be able to use the internal paths proposed as an alternative to Lizard Lane, as there is no connection to the northwest to Lizard Lane and Kitchener Road. The proposal is in conflict with **NPPF 117b and c** on accessible and safe routes.

It is important to reiterate that there are small allocations made in the Local Plan, which are also not in sustainable locations. However, it is the scale of this proposed development that makes this issue significant. Many more people will travel by car and will travel far as there are no accessible facilities nearby, which causes adverse impacts on the safety, health and wellbeing of residents and the environment.

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## 6. Design

The design of the development has not been developed in consultation with the community, and no consideration has been made of WNP design guidelines. It fails to reflect the local design policies and guidelines from the WNP and **should be refused as per NPPF policy 139**.

It fails to meet **WNP2**, which states that 'proposals for new built development in Whitburn **must** demonstrate how the scheme incorporates the principles of high quality and sustainable design. In particular, regard should be had to the principles set out in the Whitburn Design Guidelines'. The design and access statement and planning statement do not reference the WNP design guidelines at all: it does not set out how it meets the principles of the guidelines. There are key principles in the guidelines that have not been incorporated into the design, including:

- **WNP2b**: failure to reflect local character as set out in the Whitburn Design Guidelines and further described below.
- **WNP2d** (see section on landscape)
- **WNP2g**: failure to incorporate opportunities to transition to a low carbon future through sustainable design

The Whitburn Design Guidelines sets out clear principles and questions that should guide the design of development as per policy **WNP2**. The proposal has completely failed to take these into account. This includes:

- It does not maintain rural character of views and gaps and does not integrate energy efficient technologies (3.1.1)
- It does not favour permeability for pedestrians and those with disabilities (3.1.2)
- It does not maintain identified views, does not incorporate views, and the LVIA does not consider impacts on the landscape (3.1.3)
- It does not maintain existing gaps between villages (3.1.4)
- Street Layout (3.2.1): does not provide a layout that forms a connected pattern that is accessible to all users (see section on sustainable transport)
- Gateway and access features (3.2.3): Lack of gateways that reflect local character and provide a visual guide
- Pattern and building layout (3.2.4): Lack of variety of built form by providing a limited number of architectural styles that will be repeated across the development
- Traditional and contemporary architecture: buildings do not reflect local traditional architecture, nor do they achieve local distinctiveness (3.2.10-3.2.12)

**WNP3** is a policy on sustainable design and therefore also sets out requirements for the design of new development. The proposal fails to consider passive solar gains (**WNP3a**), on-site energy generation from renewable energy (**WNP3b**), while walking routes are disconnected and no cycle parking is provided (see sustainable transport) (**WNP3d**).

## 7. Landscape

The LVIA does not assess impacts on views at all. It does not refer to **WNP2d** and fails to meet the requirements of this policy, which sets out clearly that a proposal must demonstrate how it meets the principles of high quality and sustainable design, including by considering the impact of the proposal on the rural character and views through a Landscape and Visual Impact Assessment.

The Whitburn design guidelines identify the importance of maintaining the rural character of views and gaps, including the rural character of Lizard Lane. The proposed development would permanently alter this character. Views from Lizard Lane would cease to be open and rural and would instead become urbanised by the presence of housing directly adjacent to the road. The proposal includes a narrow linear strip of grass along the western edge of the site. However, this would not preserve the existing views or openness, as the introduction of housing immediately behind it fundamentally changes the character of the landscape. Paragraph 4.19 in the LVIA is therefore incorrect.

LVIA paragraph 4.12 claims there will be 'eastward views across the development and towards the coast' from the western boundary of the site. However, the height of houses will prevent views. The only views, as the Design and Access Statement acknowledges, are through streets. However, these cannot be considered equivalent to the existing views. Such glimpses would look along residential streets characterised by hard urban surfaces and housing, which is entirely different from the current open rural landscape. The views identified in the Whitburn Design Guidelines are

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clearly views across open countryside that contribute to Whitburn's rural setting. The LVIA fails to assess the loss of these views or the resulting change to landscape character.

LVIA paragraph states that there will be enhanced boundary treatment between the development and the primary school, however the plans show no measures there (apart from one tree in the south corner). There will be back gardens, streets, and patches of grass facing the school, having significant impacts on the views from the school.

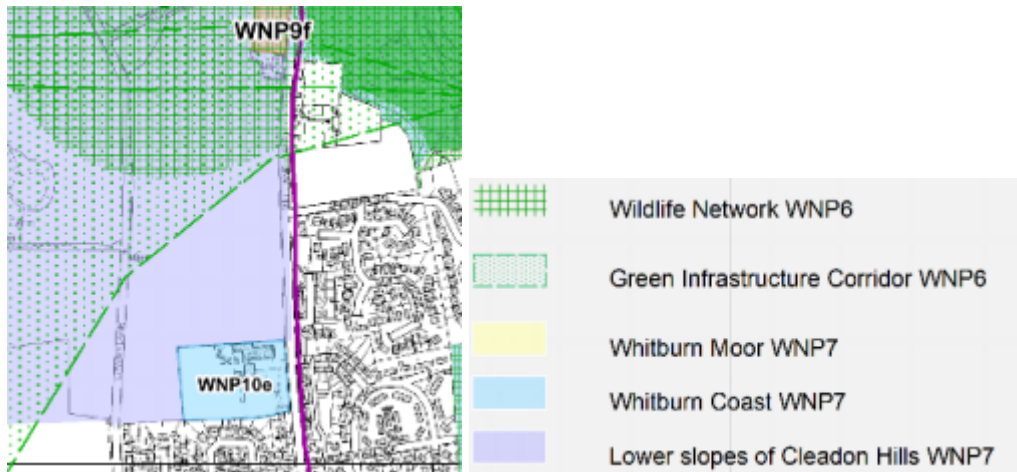
The LVIA incorrectly argues that the development's landscaping means that WNP6 and WNP7 are followed. **WNP6** states that proposals that restore, maintain and enhance the connectivity and biodiversity value, landscape value of local green infrastructure will be supported. However, there will be a net loss in biodiversity, and the development will remove part of the Green Infrastructure corridor designated in the WNP, will build on the Wildlife corridor / network as designated in the WNP, and will take out part of the undeveloped coast as there is no built-up form between the Cleadon Hills to the Whitburn Coast. The proposal will adversely affect the features in WNP6 and will therefore not be supported as per **WNP6**. It also **conflicts with NPPF 187a, b and c**.

The site falls within local landscape **WNP7**: lower slopes of Cleadon Hills. The site was allocated as a local landscape due to the importance within Whitburn's environment, landscape and for the community. The site is an open green field that forms the transition between the Cleadon Hills Landscape of High Value and the Coast Landscape of High Value (the latter identified in the emerging Local Plan, without any main modifications proposed). It falls within Cleadon Hills Character Area, which is described as being predominantly farmland, with at the edge enabling broad views across the landscape, and the Whitburn Coast Character Area, which is described as a coastal edge with little development. It forms an important function in retaining Whitburn's unique rural and coastal setting and providing a transition between the hills and the coast.

The LVIA states that 'the proposed development responds to Policy WNP7 through comprehensive landscape mitigation measures that maintain the essential characteristics of the lower slopes of Cleadon Hills, including retention of agricultural character in the wider area, enhancement of landscape structure through substantial new tree and hedgerow planting, preservation of the rural setting of Whitburn through appropriate density and design response, and creation of landscape enhancement opportunities that extend benefits beyond the immediate development area'. This is incorrect as the LVIA does not acknowledge that the introduction of approximately 205 dwellings would result in substantial and irreversible landscape change that cannot be mitigated through planting or design measures:

- The development would fundamentally alter the landscape character of the lower slopes of Cleadon Hills by replacing agricultural land with residential built form. These elements represent a clear urbanisation of land that currently contributes to the rural character and openness of this landscape. The gentle slopes of the natural and rural landscape will be lost.
- The development will interrupt the transition between the two landscapes of high value by extending the built edge of Whitburn into the countryside. This would erode the spatial and visual relationship between the hills and the coast and alter the setting of both Landscapes of High Value.
- The proposed landscaping cannot be considered mitigation, as they themselves will alter the character of the landscape. The landscape is rural and open, and anything that is not grassland will harm the landscape.

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*Images taken from the WNP policy map, showing the site is part of Wildlife Network WNP6, Green Infrastructure Corridor WNP6, and Landscape Lower Slopes of Cleadon Hills WNP7*

## 8. Agricultural Land

The Planning Statement explains that the site falls within Grade 3 agricultural land, but the applicant has not completed further analysis. Policy 40 in the emerging local plan now has more weight than at the time of writing the Planning Statement, as hearings have concluded and no main modifications have been requested on this policy. The policy requires that best and most versatile agricultural land should be avoided and lower quality land should be used first. NPPF policy 187 requires that development should contribute to and enhance the natural and local environment by recognising the benefits of the best and most versatile agricultural land and footnote 65 requires that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The threshold of 20ha is purely a consultation threshold, not an indication of scale of impacts. In addition to developing the site, it should also be noted that more land will be taken out of agricultural cultivation through the compensation strategy for waders. An assessment needs to be completed.

## 9. Natural Environment

We request that the local authority submits to the Forum the screening report and the appropriate assessment in terms of its duties relating to the Habitats Regulations.

Given the scale of the proposal, please provide a copy of the EIA screening opinion and supporting assessment in respect of the EIA Regulations.

The proposal includes a net loss in biodiversity of 16%. There are no attempts made to improve the biodiversity on site through better landscaping, but instead only proposes the use of credits. This is in conflict with Biodiversity Net Gain legislation, which states that first negative impacts on biodiversity should be avoided and reduced. The developer must first achieve net gain on site. However, based on the Biodiversity Net Gain report no attempts have been made to do so. There is no guarantee that the developer will be able to buy any credits that would improve grassland near Whitburn, or even in South Tyneside. Improving grassland elsewhere also has no use to wildlife that uses the field now. This is in conflict with the biodiversity net gain hierarchy. It fails **NPPF policy 187a, b, c and d**. Developing on this site will have a net loss in biodiversity, which means that it conflicts with **NPPF policy 159**.

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The emerging Local Nature Recovery Strategy sets out that this field is identified as an area that could become of particular importance to biodiversity (area for creating biodiversity, or ACB) by improving habitat for birds and creating new wetland. The strategy highlights opportunities here to improve grassland and habitat for birds and create new wetland habitat. The NPPF requires planning to support nature recovery, and the LNRS has identified this site as an opportunity to do so. Building on here will mean loss of existing habitat, loss in biodiversity and loss of any future nature recovery opportunity and conflicts with the **NPPF policy 187**.

The site has been assessed as being of high biodiversity value in terms of providing habitat for waders, not only within South Tyneside, but within the county. The evidence for the South Tyneside Local Plan that is now at the main modifications stage shows that the site was rejected for development due to its importance to biodiversity and in particular waders and non-breeding birds. The Wader Study of 2023 identifies this site (site 30) as one of:

*“the most attractive fields to waders [which] were those in which the highest diurnal and/or nocturnal peak counts were recorded, the highest wader counts per hectare were recorded, fields that were used most frequently and fields that were used by the highest diversity of species. (...) Of the wader species using the study area, curlew uses it most frequently and uses the largest number of fields, while the species is of high conservation concern on an international scale. (...) Conservation of these fields would benefit the species”.*

In the Strategic Land Review Consultation Responses report (2016), South Tyneside Council commented on this site (WH11) that *‘The impact on biodiversity of developing this site should be changed to red - High impact, and the suitability of this site for development should be reconsidered in light of this.’* In the 2024-25 SHLAA the site was identified as not suitable and not achievable. As shown earlier, in the emerging local plan’s Site Selection Topic Paper, the site was rejected due to this importance to waders.

The Ecological Impact Assessment states that the application site supports non-breeding curlew at a level of County importance and identifies the site as functionally linked habitat to Whitburn Firing Range Local Wildlife Site. The proposed development would therefore result in the permanent loss of habitat. The compensation proposed is not sufficient to prevent significant adverse impacts on curlew and other waders surveyed there:

- The proposed mitigation relies on off-site compensation, which is not demonstrated to be deliverable, equivalent, or secured for the long term. The compensation strategy depends on changes to the management of privately owned agricultural land, yet no certainty is provided that this management will be implemented or maintained for the lifetime of the development.
- The compensation area (8.8 ha) is smaller than the habitat being lost (10.7 ha), resulting in a clear quantitative reduction in available habitat.
- In addition, survey evidence shows the compensation land is already used by curlew as part of the existing baseline, meaning it does not provide additional habitat to accommodate displaced birds. The proposal would therefore result in displacement rather than genuine replacement, leading to a net loss of suitable habitat and unacceptable residual ecological effects, contrary to national policy requiring the conservation and enhancement of biodiversity.
- Disturbance within the area will increase, which will greatly affect the use of the surrounding fields by waders. Currently, the area west of Mill Lane is open and fields are undisturbed. This is key for waders, as the Wader Study explains: *‘At wintering sites, curlew is a wary species that easily flushes in response to disturbance from, for example, dog walkers.’* The development will introduce housing, lighting, traffic and people immediately adjacent to the compensation land. These changes are likely to increase disturbance and reduce the suitability of surrounding fields for wintering waders. In addition, the EclA acknowledges that public access and dog walking may occur within or adjacent to the compensation fields; off-lead dogs will not be stopped by the proposed boundary treatment. There is no evidence provided that curlew will use the compensation land, particularly given increased noise, light spill, loss of openness and fragmentation.
- Furthermore, the birds will be significantly disturbed during the building phase and are likely to abandon this habitat and neighbouring habitats and unlikely to ever return, especially with the increases in recreational disturbance brought about by the extra population for this development.

The proposal is therefore in **conflict** with **WNP5** that aims to protect the Firing Range LWS and **WNP6** that does not support proposals that lead to a loss in biodiversity. The proposal is contrary to paragraph **193(a) of the NPPF**, which requires planning decisions to be **refused** where significant harm cannot be avoided, mitigated or effectively compensated.

# WHITBURN NEIGHBOURHOOD FORUM

The site falls within a wildlife corridor as designated in the WNP (**WNP5**) and the emerging Local Plan (no main modifications were proposed to this). The WNP seeks to enhance the connectivity and biodiversity of these corridors. The **Local Plan policy 34** states that 'Development proposals that would have a significant adverse impact on the value and integrity of a Wildlife Corridor, as defined on the Policies Map, will only be permitted where suitable mitigation and/or compensation, is provided to retain and where possible enhance the value and integrity of the corridor'. No mitigation or compensation has been proposed. The value of this part of the corridor has been evidenced by the Wildlife Corridors Review (2020), which shows that the site contains both key species within the network, as well as key species that are just outside the network to the south of the site. It also serves as a buffer zone for the Local Wildlife Site immediately to the north. The proposal is in conflict with the policies in the WNP and Local Plan.

The development site is identified as a Green Infrastructure corridor in the Whitburn Neighbourhood Plan and in the Local Plan. The corridor forms an important ecological network that connects areas of nature along the coast and to the west. The proposal is to build on this network, with only a very small area retained as green space, but green space that will be publicly accessible and therefore disturbed. The proposal will lead to a 16% net loss in biodiversity, showing the damage done to the function of the site as a GI and wildlife corridor. The proposal is in conflict with **WNP6 and NPPF 193a and b**.

## 10. Traffic

**Material Planning Consideration - Highway issues: traffic generation, vehicular access, highway safety.**

The traffic levels have increased substantially over the last year outside the entrance to Marsden primary school, which is only metres away from the single entry/exit point for the development of 205 houses proposed to be built by Story homes.

The extra cars (possibly over 400) that this development will bring will increase traffic by up to 800 extra car journeys per day on the A183 outside the school, reducing air quality and increasing the risk to schoolchildren crossing this road at peak times.

The Travel Assessment significantly underestimates car trips (see section on sustainable transport).

There has been a 11.9 % increase in traffic volume on the A183 outside of Marsden Primary school from 2024 to 2025 with an average of 8536 car journeys on this road daily in 2025. The statistics can be found here <https://www.tinyurl.com/tadudashboard>

# WHITBURN NEIGHBOURHOOD FORUM



With the new proposed development there are now 237 new homes planned or already being built right next to Marsden Primary (205 on the fields + 32 already under construction).

Using the council's own TADU traffic counter on the A183 – which already sees 7,000–8,000 cars a day – these new houses would add around 1,100 extra vehicle movements every single day.

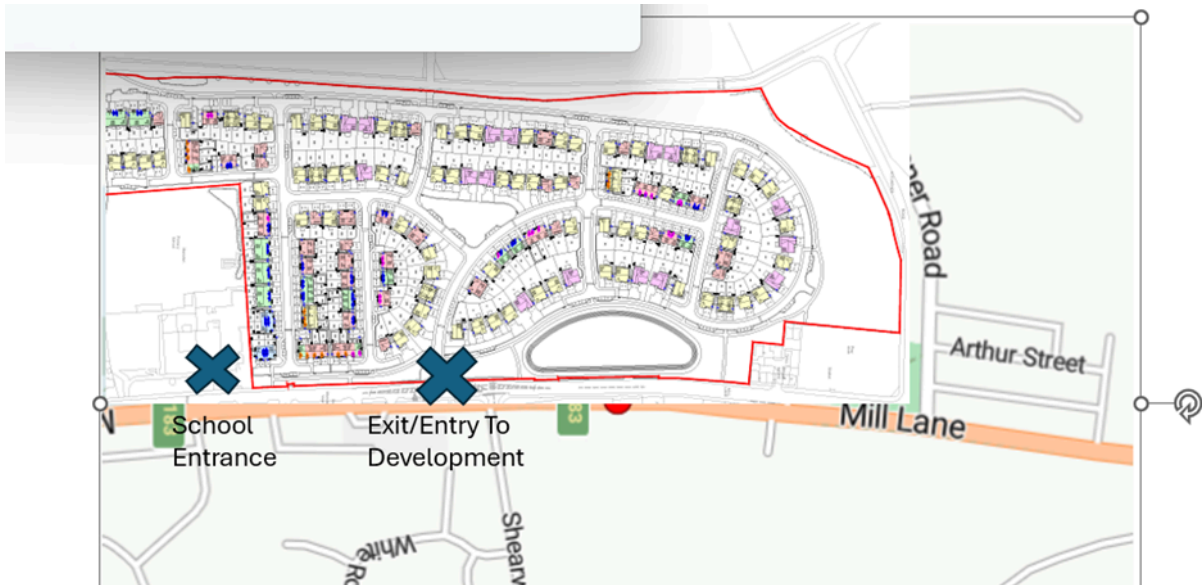
That's a 12–15% jump in traffic, based on the nationally recognised TRICS trip-rate system (run by a consortium of UK local authorities who set the standard for calculating traffic from new housing).

All of that extra traffic will exit through ONE junction... right beside a children's school.

Obviously more cars = poorer air quality at the school gate.

National health guidance is clear that when traffic builds up or crawls – like it already does at pick-up and drop-off – levels of nitrogen dioxide and soot-like particles can rise exactly where children are breathing (See Air Quality section).

# WHITBURN NEIGHBOURHOOD FORUM



The extra vehicles and extra journeys anticipated as a result of this development using the data available and the local knowledge of residents is very much at odds with the assessment by the consultant for the developer whose methodology is not considered reliable as they conclude that:

*It is therefore concluded that the development proposals will result in a minimal impact and can be accommodated on the local highway network.*

An independent assessment would find this conclusion to be unfounded.

## 11. Air Quality

The air quality in the village will deteriorate significantly due to the extra traffic (up to 800 extra car journeys on an already congested A183) generated by this development. It conflicts with WNP14.

Attached below is a video of traffic congestion in the village centre.

[removed due to size]

The system STC uses to measure air quality in Whitburn village is simply not fit for purpose. The UK Urban NO<sub>2</sub> Network (UUNN) sited a diffusion tube specifically to target Whitburn Village where modelling had indicated an exceedance of the annual mean NO<sub>2</sub> limit value, and where concentrations predicted by the PCM model and by local modelling completed by a relevant local authority were not in good agreement. South Tyneside Council chose to place this tube at a height of 2.3m. It is on the pavement on the other side of the road to traffic queueing at traffic lights, avoiding the fumes from stationary traffic. It is situated to the South of Eastfields and thus avoids the traffic congestion that occurs in the centre of Whitburn Village. The diffusion tube is situated in a location that avoids the heavier concentrations of Nitrogen Dioxide that children breathe in within the more traffic congested areas such as outside the Coop store.

Nitrogen dioxide (NO<sub>2</sub>) is heavier than air, which can cause it to accumulate in low-lying or poorly ventilated areas, posing serious health risks. The results produced from this tube in Whitburn Village invariably show levels of NO<sub>2</sub> that are well below the national annual average objective level for NO<sub>2</sub> which is 40 µg/m<sup>3</sup> per cubic metre.

# WHITBURN NEIGHBOURHOOD FORUM

The results generated by this poorly placed diffusion tube do not reflect the true levels of NO<sub>2</sub> that children breathe in on a daily basis in the centre of Whitburn Village. This shows why the disparity predicted by the PCM model and by local modelling completed by a relevant local authority were not in good agreement.

An application has been made to STC Environmental health team to re situate this diffusion tube to capture the actual levels of NO<sub>2</sub> at breathing height as per DEFRA guidelines

*I ask that you better protect the health of residents by relocating this tube into a location in the centre of the traffic congestion areas and at breathing height where the measurements made are more likely to be truly reflective of the air quality in Whitburn Village.*

This request has been declined. The decision to decline this request has been challenged.

A more accurate assessment of NO<sub>2</sub> levels experienced at children's breathing height in the more congested areas of Whitburn Village over an appropriate period of time is required before this application is considered.

Inappropriate location and height of diffusion tube



# WHITBURN NEIGHBOURHOOD FORUM

## 12. Education and Health

### Introduction

The proposed development of 205 houses on Mill Lane in Whitburn will have a significant impact on education and health services in the village. Using an average of 2.1544 residents per dwelling as per ONS estimates = 442 additional residents. What must not be forgotten is that there is also a new development opposite to this site of 32 new homes at the old Whitburn Lodge site currently being built which will bring the additional residents to total of 511.

The current population as per the 2021 census is 5,095. That means that the new developments will increase that population by just over 10% adding a considerable burden to already overstretched services in education, health and sewage disposal.

In our analysis we have kept to only the Mill Lane figures although statistics will be considerably worse if we added the Lodge development

### Education

Section 14 of the Education Act 1996 places a fundamental statutory duty on local authorities (LAs) in England and Wales to ensure there are sufficient schools to provide primary and secondary education for their area.

South Tyneside Council is also the education authority for Whitburn with the responsibility of ensuring that sufficient school places are available.

Housing numbers are:

Bedrooms	Market	Affordable	Total
1	0	8	8
2	0	30	30
3	27	38	65
4+	96	6	102
Total	123	82	205

This translates to an increase of 136 pupils in the village split as follows

<b>Early years</b>	<b>11</b>
<b>Primary</b>	<b>68</b>
<b>Secondary</b>	<b>42</b>
<b>SEN</b>	<b>15</b>

These statistics were calculated using official government guidelines.

<https://department-for-education.shinyapps.io/pupil-yields-dashboard/>

### Primary

There are two primary schools in Whitburn:

- Marsden Primary School
- Whitburn Village Primary School

Marsden Primary School is adjacent to the development whereas Whitburn Village Primary School is a 1.3 mile walk.

# WHITBURN NEIGHBOURHOOD FORUM

Children from this development will want to go to Marsden Primary School it being a 100 metre walk to school. Since the capacity of Marsden is 210 places (and it is currently at capacity) this places an extra 32% load on this school.

ONS projections show that nursery and primary school populations will decrease by 6.75 between 2025 and 2030 but this still leave a deficit of 25%.

## Secondary

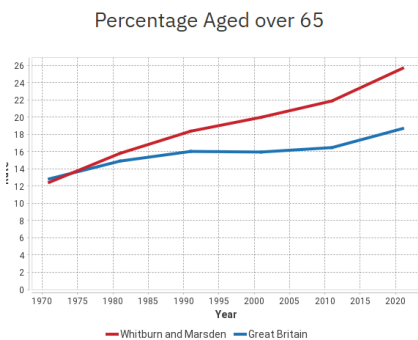
There is one secondary school in Whitburn called the Academy. The capacity of the school is 1,265 pupils. The school is considered oversubscribed, recently receiving approximately 1.65 applications per place (319 applications for 193 offers). The new development will add a further 42 applications to the oversubscription.

## Health

Whitburn Surgery has the highest patients per GP ratio in the local area at 2,679. Add a further 442 residents and this will increase the ratio to 2,900 as opposed to a national average of 2,228 (30% above the national average)

Practice Code	Practice Name	Post Code	Total Patients on List	GPs (inc trainees)	Patients per GP
A88023	WHITBURN SURGERY	SR6 7EE	5358	2.0	2,679
A88003	MARSDEN RD. HEALTH CENTRE	NE34 6RE	22616	13.1	1,726
A88013	CENTRAL SURGERY	NE34 8PS	19094	17.0	1,123
A88002	FARNHAM MEDICAL CTR.	NE33 4QY	16993	9.8	1,734
A89016	ST BEDE MEDICAL CENTRE*	SR6 0QQ	9295	5.0	1,859
A88015	ST GEORGE & RIVERSIDE MEDICAL PRACTICE	NE33 5DU & SR1 2HJ	7309	2.9	2,520
			80665	49.8	1,620

Whitburn's population has stayed steady this century but the percentage of over 65's has risen, putting extra pressure on the local medical practice. Since 1970 the percentage of over 65's has more than doubled from 12% to 26% compared to a national average of 18%



This evidence can also be seen in the Local Health Report published by South Tyneside Council from ONS figures which proves that the population of over 65's in Whitburn is 36% higher than the national average for England and 23% higher than the rest of South Tyneside.

# WHITBURN NEIGHBOURHOOD FORUM

Study area **Whitburn and Marsden (Ward 2021)**, compared with **England (Country 2021)**

## LOCAL HEALTH: REPORT PART 1 - POPULATION

### Population

These indicators show the proportion of the population in each age band, and so can be used when considering population health and need services.

Population by age group, % 2020

Indicators	Whitburn and Marsden	South Tyneside (LTLA 2021)	South Tyneside (UTLA 2021)	England
Population aged 0 to 4 years (%)	4.3	5.4	5.4	5.7
Population aged 5 to 15 years (%)	12.4	12.5	12.5	13.5
Population aged 16 to 24 years (%)	8.4	9.3	9.3	10.5
Population aged 25 to 64 years (%)	49.7	52.4	52.4	51.8
Population aged 50 to 64 years (%)	23.8	21.7	21.7	19.2
Population aged 65 years and over (%)	25.2	20.4	20.4	18.5

Source: Office for National Statistics (ONS) Small area population estimates, England and Wales: mid 2020

An ageing population significantly increases the volume and complexity of work for GP surgeries. Patients aged 65 or over consult their GP approximately four times as often as those aged 5–14 and twice as often as those in the 45–64 age group.

#### Increased Workload and Capacity Pressures

- **Higher Consultation Frequency:** Older patients account for the principal caseload in primary care, requiring more frequent appointments than younger demographics.
- **Workforce Shortfalls:** The growth in fully qualified, full-time equivalent GPs has not kept pace with the rising number of older patients.
- **Longer Consultation Times:** Typical short consultation times are often inadequate for older patients, who frequently present with complex, multifaceted health issues.

Adding another 442 patients to Whitburn without an associate increase in GP practices will bring the health service in the village to an unmanageable level.

## 13. Sewage/Drainage

The application does not accord with the WNP sewage policy

POLICY WNP12: SEWAGE AND DRAINAGE INFRASTRUCTURE:

*The net increase in wastewater generation and the impact on the local sewage and drainage network must be carefully considered in any new development proposal. Development will be supported where it is demonstrated that its surface water drainage will not add to existing site runoff or cause any adverse impact to neighbouring properties and the surrounding environment. Planning proposals will not be supported unless it can be shown by rigorous analysis that there is sufficient capacity in the local sewerage system and that any new connections will not increase the risk of system back up/flooding or cause any adverse impact to the neighbourhood area environment.*

The recommendation of the Inspector by way of a main modification of the local plan after recent examination goes on to say

*My recommendation for a modification would be to part 1 of the policy along the lines of: Development proposals should demonstrate that adequate mains foul water treatment and disposal already exist or can be provided in time to serve the development, or that this can be made available in time for the occupation of the development"*

This development will produce 74 tonnes of sewage per day. The performance of the Whitburn Sewage system over the last 10 years demonstrates that this sewage will be discharged untreated into the environment on average for 24.5 days

# WHITBURN NEIGHBOURHOOD FORUM

each year causing an adverse impact to the neighbourhood area environment. (See Annex A – Performance of Whitburn LSO over last 10 years). For 24.5 days each year the sewerage system at Whitburn cannot cope with moderate amounts of rainfall. The sewage that flows to Whitburn is no longer passed forward but is discharged into the environment with the rainwater.

This is contrary to the UWWTR 1994.

It must be stressed that the NPPF is planning guidance whereas the UWWTR 1994 is the law. STC officers sat through the local plan examination in January 2026 where it was accepted that Northumbrian Water remains in breach of the UWWTR according to the OFWAT June 2025 decision notice as no improvements have been made. NWL was to produce a plan by 8th December 2025 to reduce spills at Whitburn. According to the EA the plan they produced is regarded as inadequate by OFWAT Discharges of up to 1 million tonnes of untreated sewage into the environment (Protected areas of the North Sea) were made at Whitburn in 2023 and 2024. The recommendation of the Storm Overflow Assessment Framework is that the maximum spills from a CSO should be 10 per year. DEFRA has indicated that the Whitburn LSO will not be made compliant until 2050.

The NPPF at paragraph 124c) states that.

“Planning policies and decisions should support development that makes efficient use of land, taking into account the availability and capacity of infrastructure and services - both existing and proposed – as well as their potential for further improvement....”

This development should not be approved until the further improvement required by the SOAF is completed in 2050 so that adequate mains foul water treatment and disposal can be provided in time to serve the development, or that this can be made available in time for the occupation of the development.

This development will significantly worsen sewage pollution at Whitburn and this sewage pollution has been proved to be a public health concern locally as well as an environmental crime. No improvements in the sewage system have been made or planned since Northumbrian Water was issued with a decision notice by OFWAT in July 2025 and faced a fine of £15.7 million. No prosecutions ensued. The sewage pollution continues to blight our coastline as on 13th Feb 2026 Northumbrian Water discharged over 103,770 tonnes of untreated sewage into the sea at Whitburn with over 19 hours of discharges.

Open sea swimmers are at particular risk. The UK Health Security Agency reported on the outbreak of gastro-intestinal illness in participants at the World Triathlon Event held at Roker, Sunderland, July 2023. Eighty-eight participants reported illness to British Triathlon. The report concluded that the common exposure of all cases having swum in the sea was the most likely source of infection. After the event, Environment Agency tests emerged showing that E. coli levels in water near the swim course at Roker Beach, in Sunderland, were at 3900 E. coli bacteria colonies per 100ml.

The health of animals is intricately linked to environmental health. A local vet working at Roker has stated:

*I am gathering increasing evidence to suggest the sewage discharges into the environment at Whitburn are having a negative impact on pet health. As a veterinary surgeon I have correlated an association between gastrointestinal disease outbreaks in dogs with the recorded discharges at Whitburn, with 50% of outbreaks occurring in association with a sewage discharge event from the Whitburn long sea outfall.*

With respect to this application:

The majority of surface water from the roads, roofs and pavements is planned to be removed by the installation of a positive surface water drainage system to reduce or eliminate occurrences of standing water. The flows of surface water are to be directed to MH 7304 which takes surface water to the North Sea.

The developer claims:

*The existing surface water flood flow path has potential to find its way into the combined sewer via the road gullies in A183. The proposed development will provide betterment to the combined sewer by capturing some of the surface water flooding within the positive drainage system on site and discharging it at a restricted rate into the surface water public sewer.*

# WHITBURN NEIGHBOURHOOD FORUM

The topographical survey shows the current field drops between 1.2m to 2 m below the surface level of the road surface on Mill Lane on the Eastern Edge of the site where there is a substantial concrete retaining wall. There is absolutely no potential for the existing water flood path to climb up this retaining wall and thus find its way into the combined sewer via the road gullies in A183.



Retaining wall under Mill Lane showing the drop into the field of 1.2 to 2 metres

There is presently no runoff of surface water from this site onto the surface of the A183. There is no potential whatsoever for this to happen. Video evidence is attached below.

[removed due to size]

Furthermore, the developer intends to create a SUDS basin and declares

*When the basin fills up, it will spill over the top of the eastern site boundary at 32.710m*

This will create the potential of surface water from the site to enter the road gullies on the A183 as opposed to the current situation where there are no flows into the road gullies or sewers.

The betterment argument fails under scrutiny. This betterment argument is without merit and the officer would be advised not to support it. If it is supported, it will be liable to be legally challenged

## Definition of betterment relevant to Wastewater pollution

Wastewater pollution betterment refers to the efforts and actions taken to improve the quality of wastewater before it is released into the environment.

This includes:

- reducing the amount of wastewater generated,
- treating it properly to remove harmful contaminants, and
- ensuring that treated wastewater is reused or recycled for beneficial purposes

It is hoped that officers make a site visit for themselves to understand how the betterment argument fails.

**This is the existing flood path.**

# WHITBURN NEIGHBOURHOOD FORUM



**Figure 3.2 – Extent of 'High Risk' surface water flooding.**

This is another image of the wall the present floodwater would have to climb over to find its way into the combined sewer via the road gullies in A183



Anyone who knows the local area understands that there is no overland flood route from the green fields around Marsden school to the horses' field. The Marsden School field presently drops over at least 1 metre below the level of the highway that is Mill Lane at its easterly border along its whole length.

There has never been to anyone's knowledge a pooling of water at this point of the field in the above image sufficient to spill over this wall and find its way into the combined sewer via the road gullies in A183. The claim that *The existing surface water flood flow path has potential to find its way into the combined sewer via the road gullies in A183* is preposterous. Surface water from this field must go under Mill Lane as it cannot flow up a wall and then go overland. By going underground surface water cannot enter the road gullies.

The developer attempts to corroborate their untrue betterment statement by adding the diagram in which they state BASIN EXCEEDANCE ROUTE TO SPILL ONTO HIGHWAY AT 32.710 AS PER CURRENT OVERLAND FLOOD ROUTE. Again - there is no current overland flood route. Surface water from this site travels underground

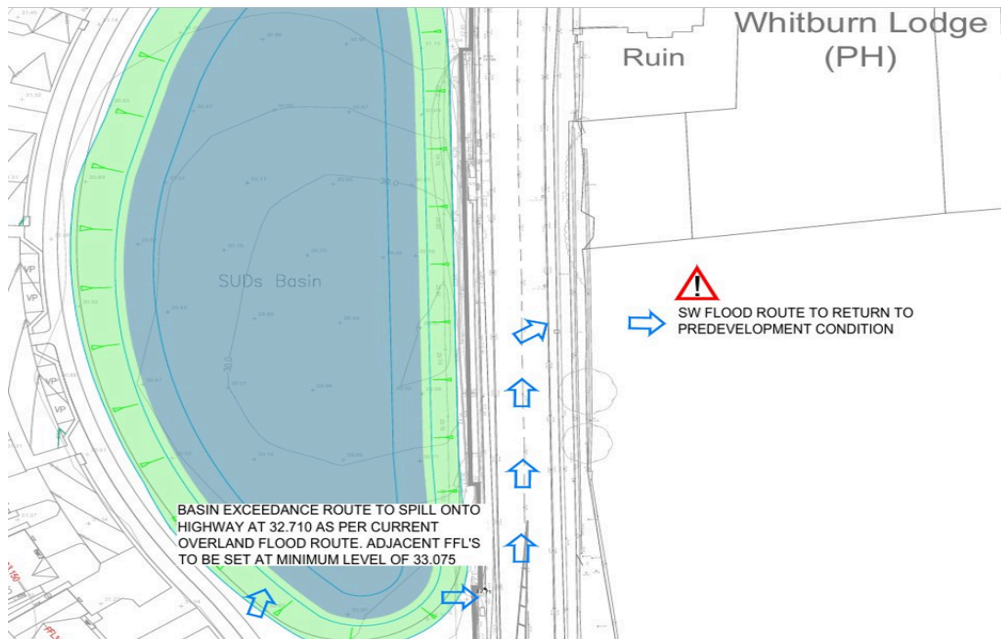
# WHITBURN NEIGHBOURHOOD FORUM

The developer adds the following:

## SW FLOOD ROUTE TO RETURN TO PREDEVELOPMENT CONDITION

The surface water can currently only flow into the 'horses field' on the opposite (East) side of the A183 by running under the road surface. The betterment argument is false. The surface water presently does not flow into any public sewer.

The use of greenfield run off rate also does not apply to this application as there is currently no greenfield run off from this site on to any of the surrounding public roads.



This plan suggests that the floodwater will spill on to the road with this development,

There is no SPILL ONTO HIGHWAY AT 32.710 AS PER CURRENT OVERLAND FLOOD ROUTE.

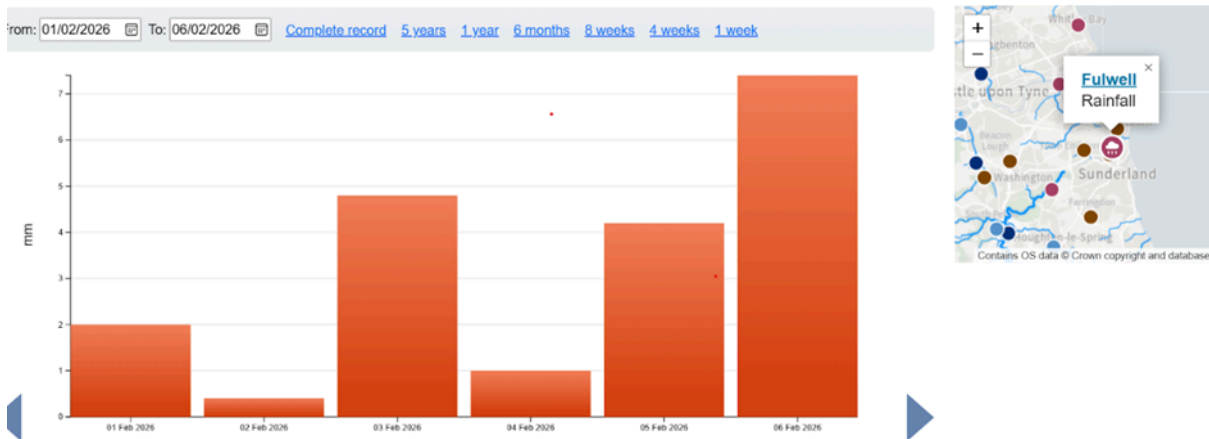
This betterment argument is demonstrably untrue. The betterment argument fails under common sense scrutiny and I invite the planning officer to visit the site and acknowledge that there is absolutely no potential for the existing surface water flood flow path to find its way into the combined sewer via the road gullies in A183.

## Recent Rainfall Evidence -

Video to be submitted showing no surface water coming from the field onto the A183 and into the road gullies during a prolonged rain event.

Rainfall in the area to 6th Feb- it rained every day - no surface water was seen to flow from the site onto the road surface of the A183 and into the road gullies on Friday 6th Feb at 16.15 after a full day of rain.

# WHITBURN NEIGHBOURHOOD FORUM



There is no betterment as the drainage strategy does not fulfil any of the requirements for wastewater betterment such as

- reducing the amount of wastewater generated,
- treating it properly to remove harmful contaminants, and
- ensuring that treated wastewater is reused or recycled for beneficial purposes

With reference to the application by Story Homes the Forum continues to analyse the drainage strategy.

Northumbrian Water have advised

*If the more sustainable options prove to be unfeasible, a restricted surface water flow of 17 l/sec would be permitted to discharge into the 225mm diameter surface water public sewer to the east of the site within White Rocks via manhole 7304. Any excess in flows must be attenuated on site.*

Sewer plans show MH 7304 flows to the sea.



The developer states:

*A vortex flow control for each network will be utilised for the development catchment areas to restrict flows to predevelopment greenfield rates.*

There is no further detail of how this vortex flow control will operate for this SUDs system or any drainage plans to show how it flows to MH 7304. Without this missing information the rigorous analysis of the sewage collection and treatment capacity for this development has not been fully undertaken as required by the Whitburn Neighbourhood Plan. This is another reason why the consultation period should be extended.

## Summary of rebuttal of betterment claim

There is presently no surface water runoff from this site into any public sewer.

# WHITBURN NEIGHBOURHOOD FORUM

When the development is complete the roofs, roads and hard standing areas will generate surface water from rainfall and this will be positively directed to MH 7304 and flow to the sea

Any claim that betterment has been established as certainty of the volumes of flows of surface water to the public sewers has been established will be particularly challenged legally as inherently absurd as this undermines the purpose of the UWWTR 1994.

As a matter of course, and for the exact purpose of disclosure for any potential legal challenge, if the betterment argument applied by the developer to this application is supported by the planning officer, despite the rebuttal evidence supplied in these comments, and this leads to an officer decision to recommend approval without seeking the required improvements in sewage collection and treatment capacity in the Whitburn system as required in the OFWAT decision notice then any such decision is liable to be legally challenged.

**The NPPF is guidance. The UWWTR 1994 is law,**

## **Legal challenges to STC position.**

The NPPF at paragraph 188 states that planning policies should focus on whether the 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.

The OFWAT decision notice, together with the OEP reports published in December 2025 (all submitted for the local plan examination) with respect to the performance of NWL and the inadequacies of the regulators shows beyond doubt that the regimes with respect to the Whitburn Sewage system have not been operating effectively.

The officer for this case is asked to accept the legal opinions submitted in Feb 2021 (Appendix A) and accept that LPAs are perfectly entitled to form their own view of likely impacts on the sewerage system based on the available evidence, on the basis of the information put before it. The officer must take into account case law (Gateshead MBC v SSE [1995] 1 Env LR 37

A further legal opinion was submitted to STC in Dec 2025 (Appendix B) which added to the previous submission by citing more recent case law - National Farmers' Union v Herefordshire Council [2025] J.P.L. 1364

Notably this case declares:

*The proposition that a planning decision-maker is entitled to proceed on the basis that other regimes will operate effectively and properly is not a legal requirement to do so. It is a rebuttable presumption that a decision-maker may depart from, if the evidence justifies it.*

Reference in this legal opinion is made to the Whitburn Lodge Appeal:

*Whilst deferral to a separate pollution control regime was open to the Inspector in that appeal decision, I note that at no point in the decision is the case law cited above mentioned. This case law demonstrates that it was equally open to the Inspector to adopt the Council's approach in that case i.e. that it does not need to be assumed that the pollution control regime governing the handling of wastewater is operating effectively. It is not clear to me that the Inspector in Whitburn Lodge was aware that such a finding was open to her*

This throws doubt over the Inspector's decision in the Whitburn Lodge appeal. STC should have sought a judicial review of the Inspector's decision as it appears she erred in law. She did not cite the case law. It is too late now to lodge a JR. The Inspector relied upon guidance in the NPPF but chose to, or was not aware of the breaches of the UWWTR 1994 which is the law. The decision in the Whitburn Lodge Appeal had a knock-on effect with the Cleadon Lane appeal. However, in the Cleadon Lane Appeal a lot of weight was given to the betterment argument. This was an error in law.

## **The EA Consultation Response (N A/2026/117402/01-L01)**

This response has been challenged by way of complaint. The Environment Agency has failed to consider the extra discharges of foul sewage this proposed development will generate and the impact these extra flows being illegally discharged into the North Sea in moderate rainfall will have on the environment at Whitburn. In failing to consider the

# WHITBURN NEIGHBOURHOOD FORUM

current breaches of the UWWTR 1994 at Whitburn and the cumulative effect of these extra discharges of untreated sewage into the environment, the EA has not discharged its duty to protect and improve the environment. A response to the complaint is due by 15<sup>th</sup> April 2026. When this response is received a review of the EAs' position will again be undertaken.

## Annex A – Performance of Whitburn LSO over last 10 years

Year	Pump Operation	Days of discharges	Volume discharge (M3)	Annual Rainfall
2015	55	27	651,958	620
2016	61	19	624,600	577
2017	50	19	569,221	621
2018	43	17	376,593	553
2019	75	26	760,993	749.8
2020	65	23	460,399	610.6
2021	121	31	821,088	660.8
2022	38	13	300,956	534
2023	102	32	1,006,680	779
2024	90	38	944,673	706
Average		24.5		

## Appendix A

Legal Opinion Feb 2021

In the matter of sewage pollution in South Tyneside

### OPINION

#### Introduction

I am asked to advise on the extent to which Local Planning Authorities (“LPAs”) are entitled to independently assess the likely impacts on the sewerage network of new proposed developments, and in particular the extent to which they can take a contrary view to the relevant sewerage undertaker.

In summary, case law and policy are both eminently clear that there is nothing in law or planning policy requiring LPAs to defer to sewerage undertakers. LPAs are perfectly entitled to form their own view of likely impacts on the sewerage system based on the available evidence.

In the particular case of the Tyneside area, it is in my view simply incorrect to say that it is not within the relevant LPAs' remit to question the local sewerage undertaker(Northumbrian Water)'s strategy towards its network, or the capacity of its infrastructure. This assertion, made in a Sunderland City Council meeting on 4th November 2020, is plainly incorrect as a matter of law.

#### Factual Background

This advice is requested in the context of significant sewage spill incidents from the Whitburn Long Sea Outfall in South Tyneside into the North Sea. I understand that the LPA, South Tyneside Council, have been advised that they are not entitled to take into account the volume and frequency of spill incidents in their consideration of the planning merits of individual planning applications.

# WHITBURN NEIGHBOURHOOD FORUM

In a meeting of Sunderland City Council on 4 th November 2020 concerning the separate Roker and Seaburn Sewerage System, the following was stated:

“As part of the planning application process the Local Planning Authority (LPA) consults with Northumbrian Water, the sewerage undertaker for Sunderland, on a range of development proposals that require a connection to the sewerage network.

Northumbrian Water assess the impact of the proposed developments on their assets and assess the capacity within their network to accommodate and treat anticipated flows arising from the proposed development. It must be noted that it is not within the remit of the LPA to question Northumbrian Waters strategy towards its network or the capacity of its infrastructure. The LPA does not have the legal remit or access to the relevant network data to perform an informed overview function.

Para 183 of the National Planning Policy Framework states that the focus of both planning policies and decisions should be on whether the proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate regulatory regimes). The planning process must 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 the responsible authorities.

This principle is articulated in case law (Gateshead MBC v SSE [1995] 1 Env LR 37).”

As will already be clear from my introduction to this advice, I strongly disagree with this summary of the legal position. Moreover, it is clear from a detailed reading of the Gateshead case that LPAs are entitled to take into account the polluting effects of developments under consideration, notwithstanding the existence of an overlapping regulatory regime.

Finally, it is important to emphasise that sewage overflows in the Tyneside area have already been considered at the European level. In Commission v UK (Case C-301/10), judgment 18 October 2012, the Court of Justice of the European Union upheld the Commission’s infringement action against the UK for breach of the Urban Waste Water Treatment Directive 91/271/EEC in respect of combined sewage overflow in Tyneside.

On 21 October 2020, the European Commission wrote to local Tyneside resident [redacted] stating that:

“In their latest communication, the United Kingdom authorities reiterated that improvement works on the Whitburn Long Sea Outfall and St Peter’s Pumping Station were completed on 14 December 2017. According to the United Kingdom authorities, the system meets its design target of 20 spills per annum. The authorities went on to explain that this was despite the occurrence of significant storms in 2018, a very wet 2019 and a wet and stormy start to 2020. The figures provided by the United Kingdom authorities showed that there were 17 spills from the Whitburn Long Sea Outfall (LSO) in 2018, discharging a total volume of 376, 593 m3. In 2018, there were 26 spills from the LSO discharging a volume of 683,676 m3. In 2020, for the first six months of the year up to 30 June, the authorities informed us that there had been 7spills, discharging 149,558 m3 from the LSO.

Given the continued elevated level of spills since December 2017, both in terms of frequency and quantity, the Commission is of the opinion that the main elements of the judgment of the Court in case C- 301/10 with regard to Whitburn have not been met.”

Thus, in the Commission’s view, the UK remains in breach of the Urban Waste Water Treatment Directive in respect of spill incidents at Whitburn specifically

## Policy Framework

Paragraph 183 of the National Planning Policy Framework (“NPPF”) notes that (emphasis added): “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.”

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Paragraph 183 is not however the only provision of the NPPF that deals with pollution, and it is a mistake to cite this provision in a vacuum. In particular, paragraph 183 is qualified by the following provisions of the NPPF:

(i) Paragraph 170 notes that planning decisions should contribute to and enhance the natural and local environment by, inter alia, “preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution” and “wherever possible, help[ing] to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans” (emphasis added);

(ii) Paragraph 180 notes that:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development”;

(iii) Paragraph 181 provides that “Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants” (emphasis added).

Planning Practice Guidance on Waste also notes the following (emphasis added): “What is the relationship between planning and other regulatory regimes? The planning system controls the development and use of land in the public interest. This includes consideration of the impacts on the local environment and amenity taking into account the criteria set out in Appendix B to National planning policy for waste. There exist a number of issues which are covered by other regulatory regimes and waste planning authorities should assume that these regimes will operate effectively. The focus of the planning system should be on whether the development itself is an acceptable use of the land and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under other regimes. However, before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body.

Paragraph: 050 Reference ID: 28-050-20141016 Revision date: 16 10 2014”

## Legal principles

The leading case on the overlap between planning and pollution controls is *Gateshead MBC v Secretary of State for the Environment* [1995] J.P.L. 432. In this case, the Court of Appeal upheld a decision by the Secretary of State to grant planning permission for an incinerator on the basis that the pollution regulator would determine appropriate limits for emissions and that there would be no unacceptable environmental impact as a result.

However, what the Court of Appeal did not say was that the Secretary of State would not have been entitled to consider emissions at all, in light of an overlapping regulatory regime. Glidewell LJ noted at 43 (emphasis added):

“Mr Mole submits, and I agree, that the extent to which discharges from a proposed plan will necessarily or probably pollute the atmosphere and/or create an unacceptable risk of harm to human beings, animals or other organisms, is a material consideration to be taken into account when deciding to grant planning permission.”

The approach in these cases has subsequently followed in a number of other cases, including *R v Bolton MBC, Ex p. Kirkman* [1998] Env. L.R. 719, *R (Bailey) v Secretary of State for Business, Enterprise and Regulatory Reform* [2008] EWHC 1257 (Admin), and *Hopkins Developments v First Secretary of State* [2006] EWHC 2823 (Admin).

16. It is important to note that in each of these cases, it was held that while a planning authority was entitled to rely on overlapping pollution controls, it is not required to do so and could make its own assessment. Thus, in *Hopkins*, a site promoter unsuccessfully challenged the refusal of permission for a concrete batching plant, on the basis that the necessary environmental permit would have ensured that the plant was operated in a way which led to no significant pollution. The High Court dismissed the appeal, because:

“...in appropriate cases planning authorities can leave pollution control to pollution control authorities, but they are not obliged as a matter of law to do so” [11] (emphasis added).

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17. The judge explained in more detail at [14]-[15] (emphasis added):

“The alternative way in which Mr Wadsley puts his case in relation to dust is to say that, in view of the existence of the pollution control regime, the conclusion that dust would cause serious harm to the amenities was Wednesbury unreasonable. Under the 2000 Regulations the council in issuing a permit would have to impose conditions to ensure that the plant was operated in such a way that no significant pollution was caused; and pollution includes emissions which impair or interfere with amenities. It was therefore not open to the inspector to conclude, assuming, as he had to assume, that the pollution control regime would be properly applied and enforced, that dust emissions from the plant would or might seriously impair the amenities of the area.

This is an argument that is superficially attractive. But it is dependent on the underlying assumption that, in relation to the likely impact of pollutants to which the 2000 Regulations apply, primacy must be accorded to the judgment of the regulator above that of the planning authority. I can see no basis for such an assumption...”

Hopkins was followed in *Harrison v Secretary of State for Communities and Local Government* [2009] EWHC 3382 (Admin), where it was held that a planning decision maker was entitled to reach its own view on the effects of a development and that it was open to an inspector to conclude that the use of the land would cause problems for local residents, notwithstanding the grant of an environmental permit.

While it is true that this line of cases pre-dated the present NPPF, as is noted in *Burnett Hall on Environmental Law* (3rd edition 2012) at 7-129:

“The NPPF largely replicates the approach taken in the former PPS10 and PPS23 of requiring planning authorities to focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions which are subject to approval under pollution control regimes, which regimes should be assumed to operate effectively.”

In that regard, I note that para 122 of the 2012 NPPF (which *Burnett-Hall* refers to) largely replicates para 183 of the 2019 NPPF.

Thus I do not consider there to be any reason why the line of case law referred to above does not remain good law. The applicable planning guidance considered in those cases is materially the same as the present NPPF.

## Analysis

In light of the above planning guidance and case law, I am firmly of the view that an LPA is perfectly entitled to form its own view of a given development's impacts on the sewerage network, on the basis of the information put before it.

While an LPA would, in most cases, be entitled to defer to a sewerage undertaker, it is by no means required to do so. In circumstances where a sewerage undertaker indicates that it does not have any concerns about the impacts of a proposed development, it is simply not the case (as a matter of law or policy) that the LPA must defer to the sewerage undertaker on that question.

While it is outside my remit to comment on the planning merits of new development in the South Tyneside area in general, from a legal perspective I would note that any evidence submitted to the LPA that contradicts Northumberland Water's assertions regarding sewerage capacity is likely to be a material consideration that cannot be disregarded by the LPA for the purposes of deciding whether to grant planning permission (although the weight to be given to that evidence is of course a matter of the LPA's planning judgment). I also note that wastewater treatment capacity in general is clearly a material planning matter.

I would also add that the fact that the European Commission takes the view that the UK has not complied with Case C-301/10 in respect of Whitburn is also a material planning consideration, which the LPA is not entitled to ignore in its consideration of proposed new developments that will impact on the local sewerage network.

Do not hesitate to contact me if I can be of further assistance.

[redacted]

# WHITBURN NEIGHBOURHOOD FORUM

21.2.2021

## Appendix B

Legal Opinion

December 2025

Re: Sewage discharges (South Tyneside)

### OPINION

#### Introduction

I am asked to provide updated advice to the Environmental Law Foundation (“ELF”) on behalf of [redacted] regarding the extent to which Local Planning Authorities (“LPAs”) are entitled to require independent assessment of the likely cumulative impacts of proposed new developments on the sewerage network as part of their development plan policies.

I previously advised ELF in relation to sewage issues in an opinion dated 24 January 2022. I concluded that: “...case law and policy are both eminently clear that there is nothing in law or planning policy requiring LPAs to defer to sewerage undertakers. LPAs are perfectly entitled to form their own view of likely cumulative impacts on the sewerage system based on the available evidence.

Indeed, the revised National Planning Policy Framework (July 2021) (“NPPF”) explicitly allows for this.” Recent case law (2025) has endorsed this analysis, which I refer to below. It follows that detailed requirements as to sewage impacts can be lawfully included in development plan documents.

# WHITBURN NEIGHBOURHOOD FORUM

Applicable policy 4. Paragraph 2011 of the revised NPPF (December 2024) notes 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 Previously, paragraphs 188 and 194.

I note also at the time of writing the announced imminent publication of a further version of the NPPF, which may result in a further change to the paragraph numbering and/or the content of the policy itself should not be revisited through the permitting regimes operated by pollution control authorities." Legal principles. 6.

In my previous opinion I noted that the courts have been clear in cases such as Gateshead MBC v Secretary of State for the Environment [1995] J.P.L. 432, Hopkins Developments v First Secretary of State [2006] EWHC 2823 (Admin) and Gladman Developments v SSCLG [2019] EWCA Civ 1543 that although LPAs are entitled to rely on overlapping pollution control regimes, they are not required to do so and may lawfully make their own assessment.

Recent case law (2025) has confirmed the correctness of that analysis: (i) In National Farmers' Union v Herefordshire Council [2025] J.P.L. 1364, the claimant challenged the inclusion of a policy in a minerals and waste local plan that required any application for planning permission for a new agricultural livestock unit to include detailed plans showing how the manure it created would be disposed of without harming the environment.

The challenge failed on the basis that the policy was neither irrational nor an illegitimate attempt to extend planning control to agricultural activities. As to the NPPF, the judge held at [81] that (emphasis added): "An approach which assumed no environmental harm on the basis of a regulatory regime which beyond any doubt had failed to protect the environment from harm would be contrary to the statutory purpose.

I note what is said at [para 201] of the 2023 NPPF, but to the degree that the LPA in adopting W3 are not assuming that the regimes will operate effectively, there is clear evidence to support their approach." (ii) In Crest Nicholson Operations Ltd v Secretary of State for Housing, Communities and Local Government [2025] EWHC 2194 (Admin), the court cited the NFU case and held as follows at [103] (emphasis added): "The proposition that a planning decision-maker is entitled to proceed on the basis that other regimes will operate effectively and properly is not a legal requirement to do so. It is a rebuttable presumption that a decision-maker may depart from, if the evidence justifies it. Whether or not to do so is an evaluative public law judgment for the decision-maker, subject only to challenge on Wednesbury grounds..."

## Analysis

It follows from the two recent legal authorities cited above that my previous conclusions remain correct, namely that although LPAs can rely on parallel regulatory regimes governing sewage discharges, they are not required to.

It further follows that development plan documents can include policies that impose requirements on applicants to demonstrate that their proposals will not lead to sewage capacity issues.

That is the approach that was adopted in the NFU case with regard to manure impacts and was held to be lawful.

I have also been asked to comment on Draft Policy 10 of the South Tyneside Draft Local Plan, which contrasts with Policy WNP12 on the Whitburn Neighbourhood Plan.

Policy WNP12 requires applicants to demonstrate by rigorous analysis that there is sufficient capacity in the local sewerage system and that any new connections will not increase the risk of system back up/ flooding or cause any adverse impact to the neighbourhood area environment.

Draft Policy 10 does not include similar requirements. 10.

The soundness of a development plan policy is of course a matter of planning judgement for the Inspector.

However, I note the following:

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(i) Policy WNP12 was independently examined and found to be sound, at a time where what is now NPPF paragraph 201 was in effect. That suggests that requiring or endorsing a similar policy in the South Tyneside Local Plan is open to the local plan Inspector.

(ii) Indeed, the case law cited above is clear that the approach set out in Policy WNP12 of the Whitburn Neighbourhood Plan is lawful.

(iii) There is obviously a risk of inconsistency if such a requirement is in the Whitburn Neighbourhood Plan but not the Local Plan.

(iv) I understand that [redacted] is concerned that Policy WNP12 did not go far enough compared to a previous draft version of that policy. That is a matter of planning 3/4 judgement which I cannot comment upon.

However, I can comment upon the lawfulness of the stricter approach advocated for by [redacted].

The pre-submission version of Policy WNP12 required “independent and verifiable evidence that there is adequate sewage and surface water drainage infrastructure to serve the development.”

In my view this was lawful and also in accordance with the case law cited above. If a local planning authority is not required to defer to regulators on these matters, then it can set its own requirements, which may very well insist upon independent and verifiable evidence.

(v) I have also reviewed the Whitburn Lodge appeal decision (APP/A4520/W/25/3365110, 22 July 2025), in particular the analysis at [24]-[25] regarding parallel pollution control regimes.

Whilst deferral to a separate pollution control regime was open to the Inspector in that appeal decision, I note that at no point in the decision is the case law cited above mentioned.

This case law demonstrates that it was equally open to the Inspector to adopt the Council’s approach in that case i.e. that it does not need to be assumed that the pollution control regime governing the handling of wastewater is operating effectively.

It is not clear to me that the Inspector in Whitburn Lodge was aware that such a finding was open to her. I advise accordingly. Do not hesitate to contact me if I can be of further assistance.

[redacted] 14.12.25