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UK: SCOTLAND THE SEWERAGE CRISIS

AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE

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Well over a century ago the lack of sewerage infrastructure and systems to provide drinkable water caused significant problems including outbreaks of disease such as typhoid and cholera. Our forefathers (particularly our Victorian forefathers) realised this and constructed the appropriate systems of which in many instances represent great engineering achievements. It is a remarkable thought that large parts of the systems which we still rely upon were engineered and constructed such a considerable length of time ago.

Unfortunately, as in many areas of public life investment has been neglected over the more recent past with the consequence that in significant parts of Scotland even if a planning permission is secured there may be no certainty about being able to implement development because water and sewer connections cannot be made. This lack of investment has been compounded by recent reorganisations including the local government reorganisation in 1996 and the reorganisation of the various constituent bodies which now form Scottish Water. Records are incomplete and inconsistent information is sometimes provided. Even in the context of the local plan process Local Planning Authorities and Reporters often find it difficult to obtain relevant and up to date information. Scottish Water and SEPA have entered into a Memorandum of Understanding which is intended to try and update information and to jointly review where constraints exist. That is an exercise which is timetabled to be completed in March 2006. That should be of considerable assistance as is SEPA's intention to work with Local Planning Authorities to ensure that relevant and up to date information is provided so that Local Plans identify allocations which can be brought forward in a timeframe consistent with the capacity of existing and proposed public sewerage infrastructure. That commitment anticipates provisions which are found in the Planning Bill currently before the Scottish Parliament relating to the involvement of key consultees in the Development Plan process.

Constraints however do exist now. In February 2005 the Scottish Executive set out the investment objectives for Scottish Water and there is currently an ongoing consultation process to determine to what extent Scottish Water will contribute to the cost of new connections to the public sewerage system and what parts of the necessary infrastructure will be eligible for a contribution from them. The extent of that process will be relevant in determining how much developers may have to contribute to the cost of the system.



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One option for a developer if there is insufficient capacity or accessing that capacity is only available at disproportionate cost it to provide a private system. SEPA have published a consultation paper entitled “SEPA Policy on Waste Water Drainage in Sewered Areas” which sets out their position generally speaking in relation to a number of issues including private plant. Perhaps not surprisingly they wish to restrict the use of private plant with view to ensuring that the sewerage system does not become splintered. While that objective is understandable in principle the consequence of this approach is potentially to increase the financial burden on developers who may be denied the opportunity of resolving a problem by installing a private system. The SEPA policy differs depending upon whether a development is within a settlement or urban area (with a strategic sewerage system) or a rural area where they may be no such system.

Where there is a strategic system, albeit there are constraints in it, SEPA appear to prepared to contemplate installation of a private system as an interim solution providing it is built to a standard which would allow adoption at a later stage, is designed in such a manner to allow easy connection once the constraint has been removed and a planning condition is imposed requiring connection to a public sewer when capacity becomes available with the consequence a connection can be made. This latter requirement may not meet the tests in relation to planning conditions imposed by Scottish Executive guidance and certainly there will be difficulties in enforcing such a condition if it requires to be enforced against a number of parties (many of whom could be private householders).

Where a private system is to be provided not on an interim basis SEPA are concerned about long term maintenance and have proposed that any such system serving more than 15 domestic properties or 50 people should be maintained by a responsible body established by the development industry (akin to a greenbelt company). Establishment of such a body appears to be an onerous undertaking and certainly raises issues about funding and the ability of that body to undertaken maintenance on a longer term basis.

SEPA propose that a definitive policy should be adopted with effect from 1 April 2006.

While it is clearly helpful to know the issues are being addressed the financial burden for developers could still be significant. Bearing in mind that developers are often expected to contribute to a number of different requirements (such as schools, affordable housing, roads etc) the consequences of increasing the financial burden for developers in relation to sewerage issues may well be to reduce funds which are available for other such requirements. It might also be properly asked whether it is appropriate for the burden on developers to be increased when (at



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least in part) the problem has resulted from a significant under investment from the public sector over a number of years. Equally it may be open to debate as to why a particular maintenance regime may be applied to private as opposed to public sewerage systems, when they are built to the same technical standards.

Anyone involved to any material extent in the development world should review the draft SEPA policy consider the consequences and if appropriate and comment upon it.

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