



In partnership with:



Preston and South Ribble Flood Risk Management Scheme

Discharge of Planning Permission Condition 7

7. No development shall commence (including any earthworks) until details of the means of ensuring the water and wastewater infrastructure, including associated easements and access areas, laid within the site boundary are protected from damage as a result of the development, have been submitted to and approved in writing by the County Planning Authority. The details shall include a survey of the exact location of the water and wastewater infrastructure and outline the potential impacts on the infrastructure from construction activities (including the construction compound and temporary parking areas) and the impacts post completion of the development and identify mitigation measures, including a timetable for implementation, to protect and prevent any detrimental impact to the infrastructure and its operation both during construction and post completion of the development. The details shall include a pre and post construction condition survey. Any mitigation measures shall be implemented in full prior to commencement of development in accordance with the approved details and timetable and shall be retained thereafter for the lifetime of the development. In the event that a diversion/diversions of the infrastructure is required, the developer shall submit evidence to the County Planning Authority that a diversion has been agreed with the relevant statutory undertaker and that the approved works have been undertaken prior to the commencement of development.

Reason: In the interest of public health and to ensure protection of the water and wastewater infrastructure laid within the site and to comply with Policy G17 of the South Ribble Local Plan and Policy EN9 of the Preston Local Plan.

Discharge

The Environment Agency (EA) and United Utilities (UU) (Paul Foster, Drainage Area Manager for Lancashire, 07765 065032, Paul.Foster@UUplc.co.uk) met to ensure discharge of condition 7. This condition focuses on the means of ensuring that water and wastewater infrastructure is dealt with appropriately by the scheme. There already exists legislation between the EA and UU which is the Water Resources Act 1991 and in particular schedule 22, which provides the means as required by this condition. The Act ensures that "water and wastewater infrastructure, including associated easements and access areas, laid within the site boundary are protected from damage as a result of the development" the EA and UU have a mature organisational relationship which means we routinely follow legislation in place to cater for this situation and the meeting with Paul confirmed this would be the correct route to discharge this condition.

The Environment Agency's statutory powers are restricted in respect of certain "protected undertakings" listed in paragraph 1(4) of Schedule 22 of the Act. Schedule 22 of the Act contains special rules for undertaking flood risk management works which may affect the interests of a protected undertaking, such as UU. If these interests are injuriously affected, protected undertakings must consent to Environment Agency activity (and may impose reasonable conditions). Schedule 22

of the Act contains a procedure for dealing with consent for works or actions prohibited by paragraphs 1(1), 3(1) or 4(1) of Schedule 22.

The process envisaged under Schedule 22 is:

1. Where the Environment Agency believes that a prohibition in paragraphs 1(1), 3(1) or 4(1) of Schedule 22 applies to Environment Agency works, the Environment Agency should advise/notify the relevant undertaking of the proposed works.
2. The Environment Agency should provide enough information to enable the undertaking to understand what is proposed and the implications it would have.
3. The undertaking then must decide whether to consent to what is proposed, with or without conditions, or to withhold consent.
4. The undertaking ought to take the decision within a reasonable period of time; the undertaking should inform the Environment Agency whether or not it consents, confirming that it is either granting consent or withholding consent.
5. Schedule 22 does not envisage the undertaking requiring the Environment Agency to sign up to an agreement rather than a Schedule 22 consent.
6. Schedule 22 prevents an undertaker from unreasonably withholding consent. If an undertaker declines to grant consent but suggests that an agreement be entered into, that would amount to unreasonably withholding consent.
7. An undertaking may grant consent subject to reasonable conditions. It would not be reasonable for an undertaking to impose a condition requiring a payment of money by the Environment Agency, as compensation would generally be payable under the Act for injury caused by the exercise of works powers.
8. It would not be reasonable to impose a condition requiring the Environment Agency to provide an indemnity; it is not necessary, given the compensation provisions in the Act.
9. If the Environment Agency considers that consent is being unreasonably withheld, then the Environment Agency would refer the dispute about whether consent should be granted to arbitration. (If we do not receive a clear and satisfactory explanation of why consent is being withheld, we may need to consider referring a dispute to arbitration)
10. Where consent is granted subject to a condition which the Environment Agency regards as unreasonable, then the dispute about the reasonableness of that condition would need to be referred to arbitration. Conditions are not a matter for negotiation under Schedule 22.

Both parties are in agreement that the legislation along with our current ways of working satisfy the condition along with there being no need to undertake mitigation works ahead of the scheme delivery. As per our normal ways of working on flood risk management schemes in the region, UU and EA works can be better programmed to minimise disruption during the scheme's construction.