

**WEST OXFORDSHIRE DISTRICT COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE**

**MONDAY 10 DECEMBER 2018**

**PROPOSED RESPONSE TO NOTICE OF MOTION REGARDING WASTE WATER**

**REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING**

(Contact: Phil Shaw Tel: (01993) 861687)

**1. PURPOSE**

To comment upon and suggest a way forward in respect of the motion proposed by Councillor Alex Postan and seconded by Councillor Michele Mead at the Council meeting held 24 October 2018.

**2. RECOMMENDATION**

That, in response to the motion proposed at its meeting on 24 October 2018, Council be recommended to approve the recommended amendment to standard conditions and the proposed informative set out under paragraph 3.9 below.

**3. BACKGROUND**

3.1. The following motion was proposed and seconded at the Council meeting held 24 October:

*“In the interests of all residents, property owners, businesses and the entire community of West Oxfordshire together with all parties, riverains, banksmen and riparian entities associated with watercourses, sewers and drains passing through and downstream of the District, the expectation of this Council be noted that all new property development, enlargement or extension be asked to restrict and prevent discharge of insoluble solids, fats and manufactured items beyond the curtilage of the property. Such notice be recorded and published to encourage permissive conditions that achieve relief from pollution and to achieve pure uncontaminated watercourses. The expectation is that fat traps and solids screens with settlement sump facility be specified and installed now and in future. A principle of developer borne cost with resident continuing administration be seen as sound responsible stewardship of this nation’s clear and pure water.”*

3.2. The motion was referred to this Committee for consideration and the views of this Committee will be submitted back to the next meeting of the Council.

**Assessment**

3.3. There is a statutory restriction that applies to the Planning system to the effect that where an alternate regulatory regime provides control then the Planning system should not seek to duplicate or overlap with those other regulatory regimes. Thus compliance or otherwise with Building Regulations, Licensing, Environmental Protection etc regimes is not a “material consideration” that can properly be taken into account in determining a Planning Application and the Planning system should not become involved where other protections exist. The position can however become somewhat blurred at the margins such as for example when a noise harm falls below the level such as would constitute a Statutory Nuisance but is nonetheless sufficiently harmful that a planning refusal for such a noise generating use adjoining noise sensitive properties might be justified on planning grounds.

- 3.4. The Building Regulations in Part H paragraph 2.21 advise “*Drainage serving kitchens in commercial hot food premises should be fitted with a grease separator complying with BS EN 1825-1:2004 and designed in accordance with BS EN 1825-2:2002 or other effective means of grease removal*”. Thus the issue of fat traps is covered in part by the Building Regulations but in essence this regulation is mostly triggered when Building Control consider new buildings specifically designed as a commercial kitchen. Under the new more permissive change of use regime introduced by Government many units designed as shops may end up being used as a takeaway etc without the relevant drainage being in place - and the regulation does not apply to other non-commercial forms of development.
- 3.5. Separately the Environmental Protection team has used section 34 of the Environmental Protection Act 1992 to remind commercial operators that they are under a duty of care to dispose of their waste responsibly and that uncontrolled discharge of fats etc to the sewers is not in compliance with that responsibility and thus potentially actionable.
- 3.6. It may be that separately the Environment Agency or Thames Water enjoy powers but your Officers are not familiar with those legislative frameworks.
- 3.7. It can be seen from the above that, as with most drainage legislation, responsibilities for compliance are divided amongst a variety of bodies and enforcement regimes may only bite against a relatively limited sector of potential polluters - namely mostly commercial rather than residential occupiers. This is perhaps unfortunate as it is understood that fat traps can be small and relatively inexpensive such that their use in domestic situations would not prove unduly burdensome when compared with the benefit of better drainage and cleaner watercourses. However your officers do not consider that the legal tests of imposing a planning condition to require such installations would be met, meaning that their mandatory installation is not a matter that the planning regime can require.
- 3.8. Given the benefits, Officers have had regard to whether such installations could be ‘encouraged’ as opposed to ‘required’. Accordingly, set out below are a modified version of the standard drainage condition and a new proposed informative which seek to educate/induce developers to have regard to the wider benefits of installing fat etc interceptors. Clearly this will not bring about a 100% solution to the issue but it should help reduce the incidence of fat bergs, pollution and restrictions of sewers as a result of fat and debris. The details submitted by way of a planning application or application to discharge conditions is in the public domain such that there may also be an element of peer pressure to encourage compliance with best practice.

### **Suggested Condition and Informative.**

- 3.9. The following amended condition and informative are suggested:

*A full surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme and results of soakage tests carried out at the site to demonstrate the infiltration rate. Where appropriate the details shall include a management plan setting out the maintenance of the drainage asset. The Surface Water Drainage scheme should, where possible, incorporate Sustainable Drainage Techniques in order to ensure compliance with the Flood and Water Management Act 2010. The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved and shall be maintained in accordance with the management plan thereafter.*

*REASON: To ensure the proper provision for surface water drainage and/ or to ensure flooding is not exacerbated in the locality.*

*NB. In order to secure compliance with the above condition the applicant is strongly encouraged to incorporate on site storm storage cells and fat traps*

*Informative*

*Disposal of fat and debris to the drainage system pollutes watercourses and inhibits the flow of sewers giving rise to additional flood risk and additional harms/impacts arising from flooding when it does occur. You are strongly advised to consider the installation of grease and fat filters to drainage outlets as these are small and inexpensive but will help to ensure cleaner rivers and less flood harms*

#### **4. ALTERNATIVES/OPTIONS**

Members could decide not to adapt the standard conditions and informative but this would be a missed opportunity to seek to help resolve the harms currently being caused

#### **5. FINANCIAL IMPLICATIONS**

None arising directly from this report

#### **6. RISKS**

None identified.

Giles Hughes  
Head of Paid Service/Head of Planning and Strategic Housing

(Author: Phil Shaw, Tel: (01993) 861687; EMail: phil.shaw@westoxon.gov.uk)  
Date: 11 November 2018

Background Papers:  
None