

**Consultation on Sustainable Urban Drainage Systems (SUDS)**  
Report by Head of Planning

**Summary:** This report outlines a joint consultation by DEFRA and Communities and Local Government (CLG) on proposals for a new regime for consenting drainage systems, including Sustainable Drainage Systems (SUDS). A response has already been sent, and this is outlined.

**Recommendation:** That the report be noted.

## **1.0 Background**

- 1.1 In response to serious flooding in the winter of 2007, the Government commissioned an independent review of the existing arrangements around the responsibility for flood risk management and infrastructure. The report into this, the Pitt Review, was published in August 2010 and identified, inter alia, that one of the weaknesses of the current system was that no single body had overall responsibility for flooding issues. It made a series of recommendations, including increased use of sustainable drainage systems. Sustainable drainage systems are systems which slow the rate of surface water run-off and improve infiltration, by mimicking natural drainage in both rural and urban areas. This reduces the risk of “flash-flooding” which occurs when rainwater rapidly flows into the public sewerage and drainage systems.
- 1.2 The Flood and Water Management Act 2010 sought to implement the recommendations of the Pitt Review. It established new statutory responsibilities for managing flood risk and set out that there would be national strategies and guidance on managing flood risk in England and Wales. It set out the arrangements under which Unitary and county councils would bring together the relevant bodies, which will have a duty to cooperate, to develop local strategies for managing local flood risk.
- 1.3 In terms of managing the flood risk applying to and resulting from development, the Act proposed that drainage systems for all new developments would need to be in line with new National Standards to help manage and reduce the flow of surface water into the sewerage system. In addition, new powers would be created to ensure that private assets which help manage the risks of floods cannot be altered without consent. For example, putting a gate in a wall that is helping protect an area could increase the risk of flooding.

- 1.4 In order to implement this, the Act set out the framework for the creation of a new duty whereby any construction that has drainage implications would require approval for that drainage system. The approval would be granted by a new body, the Sustainable Drainage Systems (SUDS) Approval Body (SAB), which would be administered by the Lead Local Flood Authority (LLFA); in the Broads this would be the County Councils. The SAB would be required to approve all construction that has drainage implications (including permitted development), and to then adopt and maintain the drainage system, provided that it is constructed as approved and consistent with national standards and serves more than one property.
- 1.5 The Act built upon PPS25 in expecting that flood risk should not be increased by new development. The Act states that construction work cannot commence where the drainage system has not been approved by the SAB; it also removes the automatic right to connect to the surface water sewer network. Such a connection would require the agreement of Anglian Water as well as SuDS approval from the SAB.
- 1.6 Schedule 3 of the Act allowed for combined applications covering planning permission and drainage consent to be made. These would be submitted to the LPA, who would forward the drainage element to the LLFA who would do their own consultation and approval, which would then be sent back to the LPA. Alternatively, drainage consent could be applied for on a freestanding basis. It was anticipated that Standing Advice would be issued and the requirements would be introduced initially on a threshold basis, starting at developments of over 20 dwellings. In Norfolk it was estimated that this could mean the SAB receiving between 2,000 and 10,000 applications for approval per year.
- 1.7 The initial timetable following the Act indicated that the SABs would be established from spring 2011, however, this was delayed on a number of occasions and the SABs have not been established.
- 1.8 In September 2014 a consultation was issued on an alternative approach to consenting drainage and flood risk infrastructure using the existing planning system. The impetus for considering alternatives is in response to concerns from house builder representatives and local government that the method of implementation set out in the Flood and Water Management Act 2010 would be complex (being run by two separate bodies) and could cause delays to development.

## **2.0 The revised proposals**

- 2.1 The revised proposals build on the existing planning system, which developers and local authorities are already using. The consultation states that policy changes to the planning system can also be introduced relatively quickly ensuring that sustainable drainage systems flood risk benefits can be brought forward as soon as possible; it is proposed to introduce the new measures in spring 2015.

2.2 The consultation notes that the NPPF already sets out the expectation that local planning authorities, as part of their function of determining planning applications, should avoid flood risk to people and property and should manage any residual risk, noting that paragraph 103 states:

*“When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test<sup>5</sup>, and if required the Exception Test<sup>6</sup>, it can be demonstrated that:*

*Within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; and*

*Development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems. “*

2.3 It proposes to strengthen the planning policy to make clear that the expectation is that sustainable drainage systems will be provided in new developments and thereby enable decision-makers to give increased weight to the provision and maintenance of sustainable drainage systems for the management of run-off. Planning applications that fail to meet a policy requirement to normally deliver SuDS first over conventional drainage could be rejected.

2.4 The consultation states that planning guidance would be provided to local planning authorities and developers in relation to the provision of sustainable drainage systems, and that this would be based on the draft sustainable drainage systems set out in the National Standards and Specified Criteria which were published in early 2014. These included a hierarchy of acceptable discharge solutions with infiltration to the ground the most preferred and connection to sewers the least preferred (but still permissible). It is envisaged that the National Standards will be supported by partner-led guidance maintained as a stand-alone document.

2.5 The consultation notes that there are a number of ways that advice on specific planning applications could be provided, including independent advice, for example from another public body, or another public body being placed under an expectation or duty to provide that advice. It is proposed, in addition, that the following bodies are also consulted on a relevant planning application:

- a) any sewerage undertaker with whose public sewer the drainage system is proposed to communicate;
- b) the Environment Agency, if the drainage system directly or indirectly involves the discharge of water into a watercourse;
- c) the relevant highway authority for a road which the approving body thinks may be affected;

- d) Canal and River Trust, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into or under a waterway managed by them;
  - e) an internal drainage board, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into an ordinary watercourse (within the meaning of section 72 of the Land Drainage Act 1991) within the board's district.
- 2.6 At the plan-making stage, a Strategic Flood Risk Assessment would be expected to be undertaken and to include consideration of the provision and suitability of sustainable drainage systems across the local area as well as taking account of the latest evidence from Local Flood Risk Management Strategies. The SFRA would be informed by expertise from the LLFA, who would be consulted. The Local Plan would be the main tool for directing development away from high flood risk areas.
- 2.7 The consultation advises that LPAs could use planning conditions and S106 Agreements to ensure to construction and maintenance of sustainable drainage systems, as well as enforce such conditions through the existing planning enforcement processes.
- 2.8 In terms of the adoption and maintenance of sustainable drainage systems, the consultation notes that there are a number of options, including service management companies, water and sewerage companies, local government and private individuals. It proposes to leave the appropriate mechanism to be negotiated and agreed on a local site-by-site basis, with the cost levied on the development users. It notes that where a scheme may be exceptionally costly to maintain and will impact on the viability of the development, the LPA will need to consider the need for a sustainable drainage system compared to a less costly solution.
- 2.9 Finally, it is proposed that the above requirement apply only to major development.

### **3.0 Commentary**

- 3.1 The revised proposals are significantly reduced in both scale and complexity compared to the former proposals to establish and administer separate SABs. In principle, it is not considered that the inclusion of SuDS within the planning process is necessarily an unacceptable approach – this is, after all, an issue which pertains to the development of land and the impacts of that development (both on and off site) and therefore falls within the general ambit of planning. The key to the operation and effectiveness of the revised proposals, however, will depend largely on the precise details of operation, which are not set out in the consultation. There are a number of key questions and issues which arise and a number of these are set out below.
- 3.2 It is not clear who will be assessing SuDS designs for adoption. If this is the LPA, there needs to be a mechanism for the adopting body to be involved. If

the LLFA or Water Company takes on the responsibility for SUDS they will need to have involvement in the decision making process. This will also need to be a statutory process and the correct level of technical expertise provided. It is not clear how this will be resourced and who will pay for it and these will be key factors to resolve if the process is to be successful.

- 3.3 It is not clear who will adopt SUDS. A plethora of options will result in a lack of clarity for developers. The current proposal allows the developer to choose who adopts and maintains the SUDS once in place. This will be problematic, particularly on large sites under multiple and phased development and there will need to be clear mechanisms in place to ensure that the systems are secured and maintained in perpetuity. It is also the case that there are specific issues around underground SUDS (which are favoured by developers and LPAs wanting to increase housing density), particularly the costs and difficulties around checking and maintenance. It will also be necessary for the LLFAs to create and maintain a central register of all SUDS and their responsible bodies, so that in 10-20 years it is not left to the LLFA to deal with failing systems.
- 3.4 Implementation of SUDS through the planning process introduces a need to balance SUDS with all the other conflicting requirements on a site, including, for example, affordable housing and biodiversity enhancements. It will be likely to result in less enhancements overall, particularly due to the need to consider viability.
- 3.5 Implementation of SUDS through the planning process introduces a political element to what is a technical process.
- 3.6 The monitoring and enforcement of SUDS conditions through planning process will need to be properly resourced, which will include specialist knowledge.
- 3.7 Finally, the proposal is for only major developments (10+ houses) to be included. It may be more appropriate to use this as an interim position only and take a more risk-based approach to sites in the longer term.

#### **4.0 Summary and conclusion**

- 4.1 The revised proposals are significantly reduced in both scale and complexity compared to the former proposals to establish and administer separate SAB. However, there will be significant operational issues to address if they are to achieve their objectives. The proposed implementation timetable of spring 2014 will be challenging to meet.
- 4.2 A response setting out the above comments has been sent.

#### **5.0 Recommendation**

- 5.1 That the report is noted

Background papers: [https://consult.defra.gov.uk/water/delivering-sustainable-drainage-systems/supporting\\_documents/20140912%20SuDS%20consult%20doc%20finalfinal.pdf](https://consult.defra.gov.uk/water/delivering-sustainable-drainage-systems/supporting_documents/20140912%20SuDS%20consult%20doc%20finalfinal.pdf)

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Date of report: 21 October 2014

Appendices: None