Response

Consultation on the Implementation of Sustainable Drainage Systems

Contact: Nicola Wheeler

Team: Neighbourhoods

Tel: 020 7067 1079

Email: nicola.wheeler@housing.org.uk

Date: March 2012

Ref: NS.EN.2012.RS.04

Registered office address
National Housing Federation, Lion Court, 25 Procter Street, London WC1V 6NY
Response - Consultation on the Implementation of Sustainable Drainage Systems

Summary

The Department for Environment Food and Rural Affairs (DEFRA) has published proposed National Standards and statutory instruments that detail the use of sustainable drainage systems (SuDS) in future development in England.

The National Housing Federation welcomes the opportunity to respond to the consultation and is happy for its response to be published. The Federation’s key points and recommendations are set out below. These are followed by responses to some of the specific consultation questions that are relevant to the social housing sector and where we have sufficient evidence to comment.

Housing associations deliver a high proportion of all new homes and will build about 170,000 homes over the next four years. They have extensive experience of meeting the higher sustainability standards for new build affordable housing including those in the Code for Sustainable Homes which covers SuDS provision.

We recognise the benefits of incorporating SuDS to reduce the risk of increased surface water run-off and flooding associated with new development as well as to improve water quality. We seek to ensure no unnecessary duplication and inconsistency with other regulations and standards and that suggested proposals are practical and affordable for our members to deliver as part of their significant development programmes.

1.0 Background

The National Housing Federation is the voice of affordable housing in England. We believe that everyone should have the home they need at a price they can afford. That’s why we represent the work of housing associations and campaign for better housing. Our members provide two and a half million homes for more than five million people. Each year they invest in a diverse range of neighbourhood projects that help create strong, vibrant communities.

We support the Rt Hon Minister for Housing, Grant Shapps’ public commitment to reduce the complexity and duplication of housing standards and ultimately to create consistency for all new housing. We are an active participant of the Local Housing Delivery Standards working group established by the Minister to report on ways to rationalise and simplify housing design standards.

The Federation is also a partner of Neighbourhoods Green; a national initiative promoting the importance of housing green space. The programme supports housing associations and tenants groups in fostering positive approaches to the design, management and use of green space. The group is represented on DEFRA’s Green Infrastructure Partnership and has developed case studies illustrating the integration of landscape solutions, including SuDS, in new housing developments and through retrofitting.
2.0 Federations Views

We are broadly in agreement with proposed approach and feel the National Standards and statutory instruments are sound. We particularly endorse the emphasis on only pursuing sustainable drainage solutions where is it practical and affordable to do so. However, without sight of the guidance that is still to be developed in relation to affordability, practicability and the principles of designing SuDS, it is difficult to comment with absolute certainty. We would hope the spirit of the consultation would be upheld in these areas and the Federation welcomes the opportunity to help to shape and inform any guidance that is subsequently developed.

We are concerned that without some further work there could be an unnecessary and potentially costly duplication of requirements with the Code for Sustainable Homes. This could impact on delivery and would seem to be contrary to the intention to reduce duplication and complexity.

We are also concerned that the definition of ‘single property’ requires clarification. At present, it will exclude a great deal of housing association development and we recommend that where such developments voluntarily implement the Standards, they should be able to seek approval and adoption.

Affordability
The Federation welcomes the affordability principle which ensures that the costs of implementing SuDS should be proportionate to the benefits. We understand that where compliance with the Standards would result in the construction of a drainage system more expensive than a conventional design, full compliance is not required and instead, the drainage system must comply with the Standards to the greatest extent possible.

This is a welcome improvement on the guidance relating to the SUR1: Management of surface water run-off section in the Code for Sustainable Homes as outlined in the Technical Guide 2010 which makes compliance mandatory at all levels. Some housing associations have found it excessively costly to comply, particularly in instances of smaller housing developments where there is limited scope and where the landscape is typified by impermeable rock. In these circumstances, they have had to resort to expensive rain water harvesting and attenuation systems to meet the Code which have risked the viability of schemes. On one housing association scheme of eleven new units in Coniston, an attenuation system located under the access road cost £74,160. This included the cost of excavating through 2m deep rock to provide a storage area. This had a significant impact on the scheme’s affordability and also resulted in an extra service charge to tenants for the ongoing maintenance.

The supplementary guidance, which is yet to be drafted on the interpretation of the affordability principle, will be essential to ensure that its implementation is feasible for our members. We would welcome the opportunity to be involved in the development of this piece of work.

Adoption and maintenance
We understand that the SuDS approving Body (SAB) will be responsible for adopting and maintaining new SuDS that serve more than one property which are constructed and function in accordance with the Standards.
However, residential buildings with multiple flats and retirement villages are defined as ‘single properties’ which will be exempt from the SAB’s adoption duty. Many schemes developed by housing associations will fall into these categories and so there is a risk that they will not be adopted. The costs of maintenance will therefore fall on housing associations which will result in increased service charges for tenants which will have implications for affordability of these schemes in the long term.

Furthermore, these sizeable developments will have drainage implications and it would serve to ensure that they are consistent with the National Standards; sustainable and functioning in accordance with approval. We recommend that where such developments voluntarily implement and achieve the National Standards, they should be able to seek approval and adoption from the SAB.

We believe further clarification is required as to what maintenance service the adopting authority would provide. It is unclear which aspects of the drainage system will be adopted. The current definition of what will be adopted is ‘those parts not vested in a sewerage undertaker.’ We understand this to also include soft landscaping solutions such as ponds, swales and rain gardens. In addition, there what will be the response times, redress and liability for rectifying any problems? This is a particular concern for social housing providers as tenants will typically go to their landlords in the first instance.

Furthermore, consideration should be given to access rights of adopted SuDS. Our members are concerned that unreasonable and onerous access rights could compromise the design of a scheme if it is needed to accommodate wide access to SuDS.

**Duplication of regulations and standards.**

Housing associations have a track record of building good quality, sustainable, affordable homes. Developing housing under the Affordable Housing Programme requires compliance with HCA Design and Quality Standards that include achieving a set level under the Code for Sustainable Homes. This is in addition to achieving Building Regulations approval and meeting planning conditions.

Housing associations have experience of delivering SuDS under SUR1: Management of surface water run-off of the Code, where the Code’s Technical Guide makes compliance mandatory at all levels. The Guide also explains that SUR 1 will need to be revised when these standards come into force but we believe that this category will be superseded by the National Standards and should be removed from the Code. Without the deletion of SUR1, there will be unnecessary and potentially costly duplication of requirements. We believe this would very much be contrary to the spirit of the work currently being undertaken by the Local Housing Delivery Standards working group.

As work on the Penfold Review continues, there will be a need to consider whether SuDS could be approved as part of a single consent procedure by the local planning authority, in consultation with the SAB. Although drainage is important, it is critical that the proposals do not give rise to another consent process that delay the development process.
Phased approach and transitional arrangements
We agree with the proposals for a phased implementation based on development thresholds. It is clear from the Impact Assessment that the greatest benefit can be achieved on larger developments. Phasing the implementation over three years and starting with the requirement for approval of large major and major size developments will help to manage the capacity of local authorities handling applications to the SAB. This approach would also allow for learning to emerge of larger developments where there is more scope for SuDS implementation, which can inform the delivery of minor developments in the future.

3.0 Consultation Questions

3.1 Implementation

Question 1 - We have based our proposals on the evidence, outlined in our Impact Assessment, of the impact of surface runoff on future development and the benefits of SuDS. Do you have any additional evidence that may alter the recommendations of the Impact Assessment?

Answer: We support the implementation option based on development thresholds. The Impact Assessment correctly shows that the greatest benefit from the requirement for SAB approval comes from large sized development. In addition, the phased approach that starts with requirement for large major and major size developments for the first 3 years is welcomed. The experience of our members has shown that implementing SuDS in smaller developments where there is less scope to achieve cost-effective techniques has been challenging and costly. One housing association scheme in Kendal found rainwater harvesting added £4,840 per unit to a small scheme of 5 bungalows. The supplementary guidance, which is yet to be drafted on the interpretation of the affordability principle, will be essential to ensure that implementation is feasible for our members.

Question 2 - We propose that SAB approval will not be required for the first 12 months: for developments that already granted planning permission before commencement; or for developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or for which a valid planning application has been submitted before commencement. Do you agree with this approach for transitional arrangements, if not please explain why?

Answer: Yes, we agree with the transitional approach as it will not pose a delay to developments already granted planning permission in the first 12 months. We understand that these developments will not be required to seek subsequent approval from the SAB.

Question 3 - We propose implementing on the common commencement date of 1 October 2012; do you agree this is reasonable? If not would you prefer an implementation date of April 2013, October 2013 or after 2013?

Answer: Yes, this is reasonable provided that SAB approval will not be required in the first 12months for developments outlined in the previous question. This would ensure housing associations have an opportunity to develop or dispose of land secured on the basis of a conventional planning approval.

Question 4 - We understand that there may be capacity issues for SABs to meet their new duty to approve drainage. We are therefore considering whether to phase implementation of the requirement for approval. Do you think a phased approach is necessary?

Answer: Yes, a phased approach would be advantageous. Implementation of SuDS on large-scale major developments where there is significantly more scope for a range of solutions would allow an opportunity for lessons to be learnt by both developers and authorities and provide time for local authorities to increase capacity before being extended to include more minor developments. However, this should not preclude other developments implementing National Standards voluntarily on the assumption that schemes would be approved and adopted in due course.
Question 5 - Do you agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval?

Answer: Yes, we agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval. We recommend that rural exception sites should also be exempt so as not to inhibit small scale affordable housing development in rural areas. Where SuDS are implemented in these instances as a result of responding to drainage implications in a local context, they should have the option to become adopted and not be at risk from becoming orphan sites.

3.2 National Standards

Question 6 - Drainage for surface runoff should be sustainable and affordable to build and maintain. Do the National Standards deliver this, if not please explain why?

Answer: The draft National Standards set out clear principles in relation to the design of SuDS that recognise the need to take into account disproportionate cost in relation to the Standards. However, it is difficult to ascertain if the National Standards will deliver this because the proposed guidance on the affordability test has not been produced as part of this consultation. However, what will be essential once the National Standards come into force is that SUR1 in the Code should be deleted to avoid unnecessary, confusing and potentially costly duplication of requirements. It is not sufficient, as the Code’s Technical Guide details will happen, for SUR 1 to be revised when these Standards come into force. We believe in the streamlining of standards in this way as set out in the remit of the Local Housing Delivery Standards working group established by the Housing Minister.

3.3 Approval

Question 8 - We propose that the SuDS Approving Body must determine an application for approval within 12 weeks where it relates to major development or a county matter and 7 weeks where it relates to other development. But could applications be determined in less time?

Answer: We agree with the proposed time limits. Clarity is sought on what sanction is available if the SAB fails to meet the time limit. Recourse to appeal is costly and involves further delay. Our view is that there should be a process of deemed approval of SuDS designs that have been prepared by accredited drainage professionals.

Question 9 - Do you think guidance for calculating the amount required for a non-performance bond is necessary?

Answer: Guidance would be helpful to remove both uncertainty and the risk of inappropriate bonding amounts being proposed.

Question 10 - Do you agree with our proposals to set approval fees for three years? If you disagree, please explain why and provide any supporting evidence.

Answer: We agree with the proposal to fix approval fees for three years. Prior to the end of the initial three year period there should be a review of the costs of the approval process so that any future fee can be closely related to the actual costs.

Question 11 - We propose that the fee for each inspection of the drainage system should be set on a cost recovery basis rather than to a fixed fee. Do you agree with this proposal?

Answer: We agree with the principle but it is too open to abuse and over-pricing. It would be better to have a fixed fee to provide certainty and to limit cost risk.

Question 12 - We propose to make arrangements for fees for applications to vary an approval, re-submitted applications, discounted fees, fees for cross area approvals as well as the refunds of application fees. Do you agree that this covers all the scenarios for which fees are likely to be needed? If not, please explain what is missing and provide further explanation if required.

Answer: The proposed arrangements appear comprehensive. A SAB should be able to waive a fee where it feels that to be equitable.
Response - Consultation on the Implementation of Sustainable Drainage Systems

**Question 13** - We propose setting a time limit of 21 days for statutory consultees to respond to the SAB. Do you agree with the timeframe proposed?

**Answer:** We agree with the proposal. The guidance should make it absolutely clear that decisions should be made in the absence of responses if they are late.

### 3.4 Enforcement

**Question 14** - We propose to give enforcement powers to the SuDS Approving Body and the local planning authority. Do you agree?

**Answer:** We agree although there needs to be absolute clarity about the roles to prevent the risk of double jeopardy.

**Question 15** - Do you agree that the proposed powers of entry are reasonable and proportionate, if not please explain why?

**Answer:** We agree with the nature and extent of the proposed powers.

**Question 16** - We propose that claims for compensation related to powers of entry and temporary stop notices must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ ceasing to have effect. Do you agree, if not please explain why?

**Answer:** We agree with the proposal. It should be clear that the compensation covers both direct and indirect costs incurred.

**Question 17** - We propose that, as in planning, a time limit of four years is set for when the SuDS Approving Body is able to give an enforcement notice? Do you agree, if not please explain why.

**Answer:** We agree with the proposed approach.

**Question 19** - We propose to provide similar procedures for appeals against SuDS enforcement notices to those which currently apply to planning enforcement appeals (written representation, hearing or inquiry). Do you agree, if not please explain why?

**Answer:** We agree with the proposed approach with one caveat. The nature of the dispute is likely to involve technical evidence, and differences between experts. Those issues often need to be explored at a hearing or an inquiry and the appellant should have the right to insist on such a procedure.

**Question 20** - We propose a register of SuDS enforcement notices which mirrors the register for planning enforcement notices. Do you agree?

**Answer:** We agree with the proposed approach.

### 3.5 Adoption

**Question 21** - For the purpose of the SuDS Approving Body's duty to adopt, "sustainable drainage system" means those parts of a drainage system that are not vested in a sewerage undertaker. Do you agree this provides certainty and clarity on what is adoptable by the SuDS Approving Body? If not please provide an alternative definition.

**Answer:** No. We believe further clarification is required as to what maintenance service the adopting authority would provide. It is unclear which aspects of the drainage system will be adopted. The current definition of what is adopted is ‘those parts not vested in a sewerage undertaker,’ we understand this to also include soft landscaping solutions such as ponds, swales and rain gardens. There will be a need to exclude private drains so that the extent of the SuDS, and the SAB responsibility is clear.

**Question 22** - The SuDS Approving Body's duty to adopt does not apply to a single property drainage system. We propose that "a drainage system or any part of a drainage system is to be treated as designed only to provide drainage for a single property if it is designed to provide drainage for any buildings or other structures that, following completion of the construction work, will be owned, managed or controlled by a single person or two or more persons together". Is our definition clear on what will or will not be adopted? If not please provide an alternative definition.
Response - Consultation on the Implementation of Sustainable Drainage Systems

**Answer:** We agree that SABs should not be automatically responsible for small scale SuDS. However, many single property SuDS will be of a significant size serving multiple dwellings. Indeed, the majority of schemes developed by housing associations (blocks of flats and sheltered schemes) will fall into the category of ‘single property’ and there is a risk that these significant developments will not be adopted. Where such developments voluntarily implement and achieve the National Standards, they should be able to seek approval and adoption from the SAB.

**Question 23** - We propose that the SuDS Approving Body should determine a request for adoption within 8 weeks of receiving the request. Do you agree with this timeframe?

**Answer:** We agree with the proposal. A failure to reply where a scheme has been prepared by an accredited drainage engineer should lead to a deemed adoption.

**Question 24** - We propose for the SuDS Approving Body to have a 28 day time limit for administrative processes (for example return of bonds, the process of registration or designations). This time limit applies throughout the SuDS process. Do you agree with this timeframe, if not please explain why?

**Answer:** We agree with the deadline. SABs should be responsible for any costs, direct or indirect, if they fail to meet this target without a clear and justifiable reason for so doing.

**Question 25** - We propose that all Statutory Undertakers must notify the SuDS Approving Body at least four weeks in advance of works that may affect the SuDS’ operation. Do you agree with this timeframe?

**Answer:** We agree with this in principle save for works that are carried out urgently, and that it is limited to works that it could reasonably have been foreseen would affect the SuDS operation.

**Question 26** - We propose upon completion of the works, the SuDS Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the National Standards. Do you agree? Do you agree, if not please explain why?

**Answer:** We agree with the proposal. The SAB must be under an obligation to consult with the party who provided the SuDS system if there is any doubt about whether it meets the appropriate standards.

3.6 **Appeals**

**Question 27** - We propose that an appeal must be made within six months of the SuDS Approving Body’s decision or within six months of when the decision was due. Do you agree?

**Answer:** We agree with the proposed approach.

**Question 28** - We propose to adopt similar procedures for SuDS appeals to those which currently apply to planning appeals (written representation, hearing or inquiry). Do you agree, if not please explain why?

**Answer:** Subject to the point raised above about the mode of appeal we agree with the proposed approach.

3.7 **‘Orphan SuDs’**

**Question 29** - Should we take action to avoid the increase of un-adopted SuDS? If your answer is no, please explain why?

**Answer:** Yes, unadopted SuDS should be avoided.

4.0 **Conclusion**

The Federation considers the proposed standards to be broadly sound while recognising that it is essential for future guidance on affordability in particular to uphold the principles of the consultation.

In order to aid delivery and compliance with the National Standards, we recommend that they should supersede category SUR1 of the Code and that developments that voluntarily implement the standards should be able to apply for adoption of the maintenance from the SAB.