

Department for Environment, Food and Rural Affairs: Consultation on implementation of the Sustainable Drainage Systems (SuDS) provisions in Schedule 3 of the Flood and Water Management Act 2010

Response of the Landscape Institute, March 2012

Background

The Landscape Institute is the Royal Chartered body for landscape architects. As a professional organisation and educational charity, we work to protect, conserve and enhance the natural and built environment for the public benefit. We accredit university courses and promote professional development to ensure that landscape architects deliver the highest standards of practice. We work with government to improve the planning, design and management of urban and rural landscape. Through our advocacy programmes and support to our members we champion landscape, and the landscape profession, in order to inspire great places where people want to live, work and visit.

The Landscape Institute's membership currently stands at approximately 6,000 landscape planners, designers, managers and scientists, all of whom often work at the landscape-scale and have a significant interest in both the intrinsic value of nature in addition to the economic and social benefits to be gained through the protection and enhancement of ecosystem services.

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?

The Landscape Institute believes that voluntary adoption has demonstrated that there has been relatively little uptake of SuDS, in part due to the difficulties of adoption. Evidence from research undertaken by MHW on behalf of Welsh Water demonstrates that even if all future sites were fully SuDS compliant, the risk of flooding will continue to increase unless we adopt significant retrofitting steps. Therefore the soonest and most complete adoption of SuDS for new development must be considered essential.

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?

The Landscape Institute does not agree with this approach for transitional arrangements.

Developments that already granted planning permission before commencement

Existing planning consents already have conditions that require a SuDS approach, although this does not necessarily require a comprehensive design. As schemes will still require their drainage to be approved, the SAB could fulfill this role, although they could exercise discretion in not requiring full compliance with the national standards for the first 12 months, if the developer could demonstrate that it would necessitate such changes to the scheme that would require them to resubmit for planning.

Developments with one or more reserve matters where an application for approval of the reserve matter(s) is made

As schemes at the outline stage are deemed 'indicative' it may depend on which matters were reserved and which agreed. Where only access is approved, then a SuDS scheme should be incorporated at the reserve matters stage. If siting and design is approved, then a more lenient approach could be taken. If landscape is already approved then unless all the SuDS were hard, this would need to be resubmitted, and therefore could not be requested.

Developments for which a valid planning application already submitted before commencement

This would depend on whether it is in outline or detail. If outline, then it should apply in full. If detail, then the same considerations apply as above.

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?

Yes this is reasonable.

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?

A number of local authorities already have their SAB in place, and are already requiring full SuDS schemes in advance of the ministerial order. There would seem no reason to require them to phase the implementation. Those that are not ready may need to phase implementation, and therefore requiring the major developments first would seem correct although it could also include any site in a flood risk area. However, three years seems far too long to allow for this upskilling, and authorities should be

encouraged to provide for a comprehensive set up for their SAB as soon as possible – perhaps a year for the smaller SABs and two years for the largest.

Question 5

Do you agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval?

The Landscape Institute believes this would not be appropriate in all circumstances; a deferred opinion until consultation with the LPA and the Environment Agency has been made on a site by site basis (e.g. if above 1ha in area or within 500m of a flood risk zone 2-3), during the neighbourhood development order process may be more appropriate, to provide a more proportionate approach.

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?

The LI fully endorses the statement in the DEFRA Consultation Document that new development should include *“consideration of the flow rate and volume of water discharged from the site, enhancing the amenity of development and providing a range of habitats to encourage biodiversity”*.

It is vital that the National Standards reinforce an integrated approach to design which sets SuDS infrastructure in the context of green infrastructure and site masterplanning, rather than setting it apart from other building and site design processes as this would risk creating a more fragmented approach to development planning and design. In order to do this the National Standards should also include a requirement that SuDS systems are well integrated into the design and designed to sustain and improve the landscape characteristics and associated biodiversity and amenity value of the site containing the development

As currently drafted, the National Standards do probably not achieve what they could, as the draft contains a number of ‘get out’ clauses (too many ‘best-practicals’ and ‘if affordables’) that only the most sustainably-minded developers are likely to comply in the way that the Standards suggests (rather than requires) that they should. The requirement for comprehensive masterplanning to provide multiple benefits and where amenity and biodiversity are also a key consideration must be stated much more forcefully and clearly. Water quality in terms of definitive outcomes is also not addressed. The levels of treatment are not always the most useful way of delivering water quality, and may sometime be unnecessarily onerous, and sometimes insufficient.

Whilst the benefits of amenity and biodiversity are mentioned, and the siting of SuDS in public land proposed (to avoid excessive land take by SuDS), there is no specific requirement that these aspects are comprehensively considered. To achieve truly sustainable schemes, the SuDS should be integrated

within the scheme at the masterplanning stage. There is still limited understanding of the potential for SuDS to add multiple benefits and provide attractive multi-functional landscapes when incorporated within a site's green infrastructure. It is likely that the majority of SuDS schemes will be designed in the same way as most current drainage schemes, and the standard solutions of permeable paving and crated storage will continue to proliferate. This will lead to a failure to realise the multiple benefits that could be obtained by an integrated approach, and which are proposed as being desirable within the Standards.

Question 7

Affordable sustainable drainage systems for surface runoff are comparable in costs with conventional alternatives. Do you agree?

Depending on the site they can be cheaper, comparable or more expensive. Landscape Institute registered practice Illman Young undertook a study to inform SME housing developers about SuDS. As part of that study, Illman Young considered a housing site for 50 houses at 40 dwellings per hectare and designed a conceptual traditional drainage system, a 'semi-engineered' SuDS, and a fully integrated SuDS. These were then costed. The full SuDS was the cheapest, closely followed by the traditional system, with the semi-engineered system being the most expensive. This was evidently the case as the semi-engineered system required a more complex approach than a traditional system, and more expensive drainage components (involving permeable paving and crated storage), but gained little benefit from the cheaper soft SuDS components.

Further comparative studies are urgently required to demonstrate the different approaches and costs. Please see the project referred to above at <http://www.wndc.org.uk/planning-services/>

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? If yes, please specify reduced time to consider applications:

- **1 week less**
- **3 weeks less**
- **5 weeks less**

The total time between submission and approval should not take longer than planning approval, particularly where a combined application is made. The length of the response time should include a minimum of two weeks for the local authority to forward the application to the SAB.

However, if this application is combined and statutory consultees (e.g. the Environment Agency, Internal Drainage Board) are commenting on Flood Risk Assessments (but aren't the same people as the SAB or as who are commenting on the SuDS proposals) then there is potential for there to be delays/difficulties in obtaining an efficient coordinated decision (after amending designs/FRAs etc.) within the timeframe.

Logic suggests that the adequacy of the FRA in combination with the SuDS proposal needs to be considered in a coordinated way and that provision must be made for this in the new regulations to avoid delays/inefficiencies.

Question 9

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

Yes

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.

Yes

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?

Yes

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.

The Landscape Institute is unclear as to whether fees for appeals are included?

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?

Yes

Enforcement

Question 14

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

Yes

Question 15

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

Yes

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?

Yes

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.

Yes

Question 18

Are the criminal offences proposed in the draft statutory instrument appropriate and proportionate?

Yes

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?

Yes

Question 20

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

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.

It is relatively clear what standards are necessary to for a scheme to be considered 'adoptable'. What is not clear is what types of schemes will be considered for adoption.

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.

Yes.

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?

Yes

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?

Yes

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?

Yes

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?

Yes

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?

Yes

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?

No answer

"Orphan" SuDS

Question 29

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

No answer

Additional comment

The Landscape Institute disagrees with paragraph 2.3 on page 6 of the National Standards document which refers to affordability. We believe that this policy undermines the multifunctional nature of SuDS which are delivering a wide range of benefits. SuDS may well be a more expensive option than conventional drainage systems but this should not offer a developer the means a means of avoiding implementation. Reduced costs for developers, through avoidance of "expensive" SuDs, will simply be transferred to other areas of the economy: flooded homes, businesses, transport infrastructure, and the insurance industry.

Green infrastructure is a key feature of the Landscape Institute's ongoing policy and advocacy work. The Landscape Institute has published two documents on the importance of green infrastructure, most recently Local green infrastructure: helping communities make the most of their landscapes. This is

aimed at local decision makers who, under the Localism Act, will be in a position to make more decisions about what takes place in their neighbourhoods. More information can be found here:
<http://www.landscapeinstitute.org/policy/GreenInfrastructure.php>