

SABS - Simply A Bad Scare

The hovering spectre of the controversial SuDS Authorising Bodies (SABS) has at last been blown away in favour of delivering SuDS through changes to the existing planning regime; as confirmed in the recent written ministerial statement by the Secretary of State for Communities and Local Government. So why, when they were such a long time in the planning, have SABS now been given their marching orders?

Eric Pickles explained that the Department for Communities & Local Government and Department for Environment, Food & Rural Affairs' response to the consultation which preceded the statement [1] 'will make clear that the Government's expectation is that sustainable drainage systems will be provided in new developments wherever this is appropriate'. It is apparent from the new proposals that the voices of developers and other key stakeholders opposing the proposed SABS regime have been heard.

The full response is available via:
<https://www.gov.uk/government/consultations/sustainable-drainage-systems-changes-to-the-planning-system>.

What are the proposals?

The expectation is that local planning policies and decisions on planning applications relating to major development [2] will ensure that SuDS will be put in place unless the developer can demonstrate that it would be inappropriate to do so. The proposals will not affect the existing requirement that priority should be given to the use of SuDS for all new developments in areas at risk of flooding.

According to the written statement the idea is that, in relation to the management of surface water, local planning authorities will:

- i Consult the relevant lead local flood authority;
- i Satisfy themselves that the proposed minimum standards of operation are appropriate; and
- i Ensure that there are arrangements in place for ongoing maintenance over the lifetime of the

development. This is intended to be done through the use of planning obligations or conditions and is likely to cover a range of options for developers, including use of service management companies, agreements with water and sewerage companies or local government, or transfer of responsibility for individual household drainage systems to the householder.

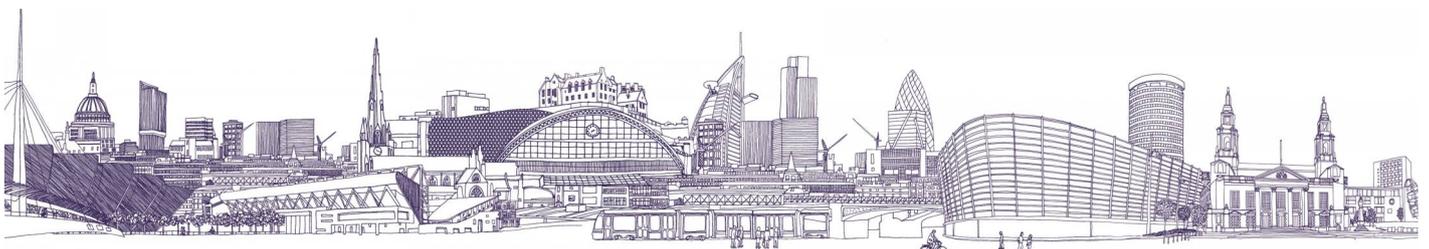
Following the December statement, a further consultation invited responses to the statutory consultee arrangements for the planning application process [3]. Views were sought in relation to measures aimed at ensuring more effective provision of advice to local planning authorities (LPAs) when considering SuDS and particularly:

- i To ensure that LPAs have access to relevant expertise, it is proposed to introduce the lead local flood authority as a statutory consultee on major planning applications with surface water drainage implications.
- i It is also proposed to change the thresholds for the Environment Agency's statutory consultee involvement in a planning application to achieve a more proportionate approach in view of the changing responsibilities.
- i Consideration is being given to whether water companies ought to be made statutory consultees in respect of shale oil and gas development.

The responses to this consultation are in the process of being analysed with the results expected shortly.

The consultation document can be viewed here:
<https://www.gov.uk/government/consultations/planning-application-process-statutory-consultee-arrangements>.

The effect of the proposed new arrangements is that when the consultation process is finalised, together with any resulting changes to the planning process, SuDS will be a material planning consideration. This means that instead of the proposals under the Flood and Water Management Act which would have seen SuDS Approving Bodies (SABS) giving a separate consent for



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SuDS, there will remain a single consenting regime with no separate SABS approval process.

When do the changes take effect?

Changes are anticipated to come into force in April 2015 when it is intended that LPAs will be able to consult with lead local flood authorities as statutory consultees on surface water management.

What do the changes mean in practice?

Where a land acquisition contract is conditional on planning, SuDS will, going forward, form part of that conditionality. On the basis that any SuDS requirements will form part of the planning conditions, it would be prudent to cater for SuDS within the 'onerous conditions' provisions, ensuring that you are able to extract yourself from the deal not only if the cost of constructing the system will render the development unviable, but also the cost of maintenance.

[1] Consultation on delivering Sustainable Drainage Systems which ran from 12/09/14 to 24/10/14.

[2] Developments of 10 or more dwellings; or equivalent non-residential or mixed development.

[3] Consultation on further changes to statutory consultee arrangements for the planning application process which ran from 1/12/14 to 29/01/15

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If you would like to discuss any of the issues raised in this update, please contact:



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