

SuDS - the maintenance options

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Sustainable drainage systems (SuDS) have risen in importance in recent years. In this article we look at the options for maintenance of SuDS in England, and the importance of considering the implications of novel proposals.

Common current arrangements

SuDS are not new to developers and section 106 agreements will usually require transfer of the SuD system, along with public open space, to a specialist company, which will take over maintenance and charge the plot buyers an annual maintenance fee. This is usually organised through a management company, but this is not always the case.

Buyers are bound to pay their share of the maintenance fee through the common conveyancing technique of a Land Registry restriction in favour of the management company, and a requirement for buyers to enter into a deed of covenant.

For small developments, the requirement to maintain is often the responsibility of all of the plot owners themselves, as opposed to a management company. For example, if the SuD system includes an attenuation tank under 1 plot, that plot owner will have the obligation to maintain subject to contributions from the other plot owners who use the tank.

Government U-turn on adoption of SuDS

Until July 2014, the proposal was for surface run-off systems to be approved by a newly created SuDS approving body before construction started. An application could only be approved if the SuD system complied with national standards.

The approving body was supposed to adopt and maintain any approved SuDS so long as they were functioning correctly and served more than one property. There was to be an approving body within each of the 152 Lead Local Flood Authorities (LLFAs) - the county councils and unitary authorities in England.

Following considerable preliminary work in testing these proposals, the Government decided not to pursue this route, and in December 2014, announced that SuDS in England would be delivered through changes to the current planning regime.

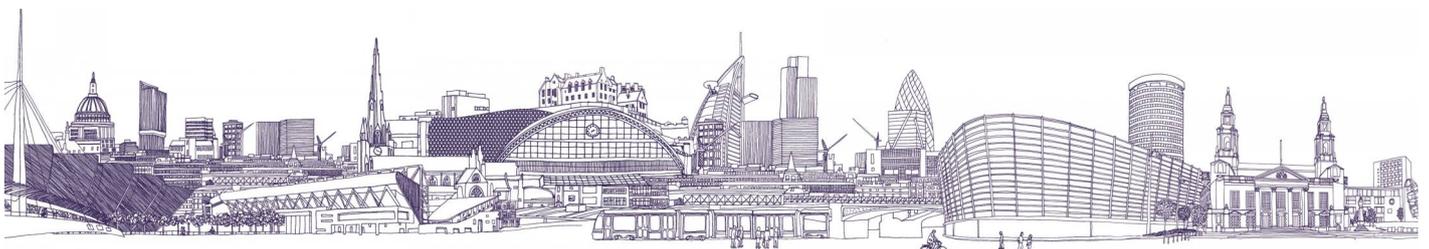
From 15 April 2015, LLFAs became a statutory consultee on planning applications for major developments, which include a development of 10 or more dwelling houses. They also have a role in advising a local planning authority whether a SuD system would be inappropriate for a particular development proposal.

Any SuDS infrastructure provided will not necessarily be adopted by any designated body - the planning practice guidance on SuDs does not impose a mandatory requirement for adoption.

Maintenance options

In its consultation paper in September 2014 on the alternative approach to SuDS using the current planning regime, the Government outlined a range of maintenance options:

- Service management companies, as outlined in current arrangements (see above).
- Adoption by water and sewerage companies (WaSCs). Under their statutory powers, WaSCs are able to maintain drainage systems which relieve the public sewer and this includes SuDS. The SuDS would be included in the WaSC's ordinary charging scheme and maintenance costs would be funded through the surface water drainage element of household water bills. The charges would be regulated by Ofwat.
- The WaSC could offer its services as a service management company. In that instance it would have to collect the maintenance costs from the plot owners on the individual sites.



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- Some local authorities may wish to take on responsibility for the maintenance of SuDS as part of their wider public open space and amenity management functions, or where the SuD system provides advantages for the wider community. The local authority would have to charge for this.

Considerations for developers

Already we are finding that different local authorities are proposing a range of maintenance options with no settled single approach. This is to be expected as local planning authorities and LLFAs grapple with the new approach and develop the necessary expertise.

Some LLFAs may have a form of adoption agreement, as at one time they were to adopt approved SuDS, and some will have been involved in pilot schemes. Other local authorities may not have a standard agreement and it is particularly important for developers to think carefully through the implications on plot sales of any novel agreements. Aspects to consider include:

- If a council or WaSC is to adopt the SuD system, the agreement must provide that title to the system is transferred to it following the usual maintenance period and not be left with the developer.
- The SuD system may be managed but the outfall may still need to be adopted.
- Ensure that title to **all** parts of the SuD system will transfer to the council or WaSC if it is to adopt the system.
- Control of the cost and service charges which will ultimately be payable by the plot purchasers.

In real terms, developers may find that several solutions are required to deliver a SuD system on a site with economics not necessarily being the controlling factor.

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



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