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Food & Rural Affairs

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Department for  
Communities and  
Local Government

## **Consultation on delivering Sustainable Drainage Systems**

**A summary of responses to the consultation and  
the government response**

**18 December 2014**



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# Introduction

This is a summary of the responses to the public consultation on an approach to deliver effective sustainable drainage systems, which ran for 6 weeks from 12 September 2014 to 24 October 2014.

The consultation sought views and evidence from a wide range of partners on an alternative approach to the one envisaged in the Flood and Water Management Act 2010, specifically to deliver sustainable drainage systems through changes to the current planning system. Through 7 questions, the consultation set out four key areas for discussion: whether the planning system would deliver sustainable drainage systems; local planning authorities' ability to obtain appropriate expert advice; appropriate thresholds for the proposed policy; and the maintenance of sustainable drainage systems. In this document, a summary of the general themes and concerns raised is provided on the four key areas together with the Government's response.

402 responses were received, from local authorities, unitary (19%), district/borough (23%) and county (7%); water companies (3%); property developers and builders (4%); regulators (10%); academics, consultants and research organisations (9%); professional and trade associations (8%); individuals and community groups (14%); and non-declared respondents (2%).<sup>1</sup>

The Government is committed to addressing the concerns raised in the Pitt Review. It was therefore satisfying to see recognition from respondents of the strength of a single consenting regime for the delivery of sustainable drainage systems. Concerns raised about the capacity and technical expertise of local planning authorities are, however, appreciated, and the Government proposes to address these concerns via a capacity-building programme and by consulting on making Lead Local Flood Authorities statutory consultees in planning, for surface water management. The Government also agrees with respondents that long-term maintenance must be guaranteed. It will be the responsibility of local planning authorities to impose effective planning conditions that require effective maintenance arrangements to be put in place. The Government will continue to encourage local government to use the powers provided to it to enforce these conditions, to ensure that sustainable drainage systems are effectively maintained in the long-term.

The consultation was conducted jointly by the Department for Environment, Food and Rural Affairs and the Department for Communities and Local Government.

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<sup>1</sup> Figures are rounded.

# Strengthening the planning regime for sustainable drainage systems

The consultation explored the possibility of strengthening the planning system as a way of delivering sustainable drainage systems. This would be done principally by amending planning policy so that local planning authorities could give increased weight to the provision and maintenance of sustainable drainage systems, alongside other material considerations, during the determination of a planning application. The consultation also proposed that the use of conditions attached to planning permissions and section 106 agreements<sup>2</sup> be used to ensure the construction and maintenance of the drainage system in accordance with a detailed scheme as agreed with the local planning authority.

## **Q1. Do you agree that the proposed revision to planning policy would deliver sustainable drainage which will be maintained? If not, why not?**

Nearly all respondents offered comments on this question, even where a direct yes/no answer was not provided. 71% of respondents expressed the view that the proposed revision to planning policy, as set out in the consultation and without amendment, would not deliver sustainable drainage which would be maintained. A significant number of local authorities, water companies and developers nonetheless did recognise the merit in streamlining the approval of sustainable drainage systems into a single consenting regime and strengthening the National Planning Policy Framework.

Reservations derived largely from uncertainty about the way in which sustainable drainage systems would be maintained and the lack of technical expertise and capacity currently held by local planning authorities to approve and inspect sustainable drainage systems. Some respondents suggested the amendment of building regulations to deal with this, and others noted the need to ensure a consistent approach to available guidance.

## **Government response**

The Government remains committed to addressing the concerns set out in the Pitt Review, published following the 2007 floods. We welcome the support of so many respondents for streamlining the approach to deliver sustainable drainage in a way which balances clear local coordination and responsibility with the needs of business and local communities.

The Pitt Review identified that there were too many organisations involved in surface water flood risk management, creating a fragmented approach in 2007. Since then, the National Planning Policy Framework (2012) has prioritised the use of sustainable drainage systems (paragraph 103) for areas at risk of flooding and the guidance stipulates that developers need to ensure their design allows for maintenance of the system, so that it continues to

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<sup>2</sup> Governed by the Town and Country Planning Act 1990 (as amended).

provide effective drainage.<sup>3</sup> This has undoubtedly contributed to the increased uptake of sustainable drainage systems and played no small part in ensuring that developers “stop and think” about whether there are alternative solutions for surface water drainage to old-fashioned solutions, thereby addressing another concern in the Review (paragraph 5.46 of the report).

The proposed amendments to planning policy will strengthen that requirement by making sustainable drainage systems a material consideration in planning for major development.<sup>4</sup> The use of appropriate planning conditions will require that sustainable drainage systems and long-term maintenance arrangements are put in place. Local planning authorities already possess the powers needed to enforce against non-compliance with those conditions.

The Government recognises the importance of having one clear set of National Standards and supportive technical guidance. The Government also recognises the large amount of work that has already gone into the production of National Standards and supportive guidance under the Schedule 3 approach. Therefore the Government will utilise this existing work to produce clear and straightforward planning practice guidance based on the National Standards.

The Government appreciates concerns about the capacity of local planning authorities to approve sustainable drainage systems and plans to put in place a capacity-building programme to be delivered with trusted partners before any change comes into effect in order to address concerns expressed by consultation respondents.

The Government has also noted concerns raised about the technical capability in local planning authorities to inspect the construction of sustainable drainage systems and the suggestion made by many respondents that building regulations is a more suitable consenting regime for this purpose. The Government proposes to monitor the issue and keep the option of amending building regulations under review.

## **Advice to the Local Planning Authority**

The consultation sought views on the best way for local planning authorities to seek the expert advice they need to effectively assess the suitability of proposed drainage schemes in planning applications. The Government gave a number of options by which the planning authority could gain this advice, including the seeking of independent advice, or putting another public body under an expectation or duty to provide advice.

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<sup>3</sup> National Planning Policy Framework:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60777/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60777/2116950.pdf)

<sup>4</sup> See article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 for a definition of major development:

[http://www.legislation.gov.uk/ukxi/2010/2184/pdfs/ukxi\\_20102184\\_en.pdf](http://www.legislation.gov.uk/ukxi/2010/2184/pdfs/ukxi_20102184_en.pdf)

**Q2. How should the Local Planning Authority obtain expert advice on sustainable drainage systems and their maintenance? What are the costs/benefits of different approaches?**

**Q3. What are the impacts of different approaches for Local Planning Authorities to secure expert advice within the timescales set for determining planning applications?**

The widely held view was that local planning authorities do not presently have the technical expertise necessary to determine sustainable drainage proposals. The overwhelming majority of respondents identified this lack of technical expertise; and the certainty of obtaining the right expert advice, and in good time, from a third party, as the two main issues likely to impact upon the timescales set for determining planning applications. It was noted that retaining a variety of options for obtaining advice could exacerbate uncertainty and delay. Local authorities also felt that sourcing expert advice, even from Lead Local Flood Authorities, could lead to delay unless a consultee was legally required to provide advice; the importance of having clear lines of responsibility and timings for when advice is required was particularly highlighted and some explicitly suggested it would be highly desirable to ensure there was a statutory consultee for local planning authorities to consult on sustainable drainage systems.

### **Government response**

The Government has noted the concerns expressed by many of the respondents that local planning authorities need the technical expertise to approve the sustainable drainage systems proposed in applications and would therefore require expert advice to ensure that effective sustainable drainage systems are delivered within the statutory timeframes in which to determine planning applications. The Government also agrees with many respondents that Lead Local Flood Authorities should be best placed to give such advice due to the recent provisions in the Flood and Water Management Act 2010 that have given these bodies overall strategic responsibility for local flood risk management including surface water.<sup>5</sup>

The Government has also noted the concerns regarding possible delay at approval stage caused by a lack of a consistent and guaranteed source of advice. We plan to consult on an option to make Lead Local Flood Authorities a statutory consultee for planning applications on surface water management. Statutory consultees are under a duty to respond to the local planning authority and report on their performance on providing a substantive response within deadlines set out in legislation. Such an arrangement with the Lead Local Flood Authority would ensure that appropriate technical advice was available at approval stage. The consultation will also seek views on the instances where it might be

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<sup>5</sup> S. 9, Flood and Water Management Act 2010:  
[http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga\\_20100029\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga_20100029_en.pdf)

appropriate for local planning authorities to consult the Lead Local Flood Authority and how existing flexibilities can be used to ensure a proportionate approach. Government will undertake an assessment of any costs incurred by this approach at the time of consultation.

## Development size thresholds

The consultation proposed that the proposed revisions to planning policy outlined in the consultation document would apply only to major development<sup>6</sup> (i.e. residential developments of 10+ units; equivalent non-residential and/or mixed developments) with drainage implications.

Minor development (residential developments with 9 units or fewer; equivalent non-residential and/or mixed developments) with drainage implications would continue to be subject to existing planning policy.<sup>7</sup>

### **Q4. Do you agree that minor size developments be exempt from the proposed revision to the planning policy and guidance? Do you think thresholds should be higher?**

62% of respondents were not in favour of an exemption for minor size developments, and 63% also stated that they did not want a threshold higher than that suggested. A large number of respondents underlined that multiple small-scale developments could have a cumulative, detrimental impact on flood risk and some respondents queried whether this would mean Pitt's recommendations were not fulfilled.

However, a number of respondents who acknowledged this risk went on to express concerns about the capacity of local planning authorities to apply the new policy to all development and thought that a threshold was necessary to avoid an intolerable burden on local authority resources.

## Government response

The Government acknowledges concerns raised about the need to avoid excessive burdens on local planning authority resources and agrees with those respondents who made the point that a threshold exempting minor developments from the proposed revisions to planning policy may help to mitigate this risk. The Government is also mindful

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<sup>6</sup> See article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 for a definition of major development:

[http://www.legislation.gov.uk/ukxi/2010/2184/pdfs/ukxi\\_20102184\\_en.pdf](http://www.legislation.gov.uk/ukxi/2010/2184/pdfs/ukxi_20102184_en.pdf)

<sup>7</sup> See paragraph 103 of the National Planning Policy Framework:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)



of the importance of keeping the regulatory burdens on smaller businesses at an appropriate level.

The Government has, however, noted the concerns raised on the question of exempting minor development from the change in planning policy (although not from the existing requirement to prioritise the use of sustainable drainage systems in areas at risk of flooding); including concerns about the potential cumulative impact of minor development on flood risk.

On balance, and given the existing requirement on sustainable drainage systems in planning policy, the Government is minded to proceed as set out in the consultation document and apply the changes in planning policy to major development only. The Government would keep the effectiveness of this approach under review, and consider making detailed adjustments where necessary. Local planning authorities would continue to ensure that flood risk is not increased by any new development and that sustainable drainage systems are considered for all new developments.

The Government considers that this represents a proportionate response to the concerns expressed in the Pitt Review.

## Maintenance of Sustainable Drainage Systems

The consultation proposed that conditions would normally be attached to a planning permission requiring that any sustainable drainage systems to be constructed are maintained for the lifetime of the development. It was proposed that developers would be free to choose from a suite of different maintenance options, including the use of service management companies, agreements with water and sewerage companies or with local government, or the transfer of responsibility for individual household drainage systems to the householder.

In addition to seeking evidence of expected maintenance costs, the consultation proposed allowing developers and communities to find the best solution to funding maintenance for a site that would be transparent, good value and acceptable to homebuyers. Where the cost of ongoing maintenance would impair the deliverability of development, the planning authority might consider that a condition requiring the implementation of a sustainable drainage system would not be appropriate.

### **Q5. What other maintenance options could be viable? Do you have examples of their use?**

The majority of respondents answering this question focused on the options presented in the consultation. There was strong support across sectors for allowing developers to choose from a suite of maintenance options, provided there were clear arrangements in place to ensure that maintenance took place. In particular, respondents wanted to be sure

that sustainable drainage systems would be maintained to a satisfactory standard for the lifetime of the development. It was the opinion of a number of local authority respondents that penalties for failing to comply with planning conditions are not heavy and that there can be difficulties in securing compliance.

In terms of alternative options, some respondents suggested the use of community trusts such as wildlife trusts where the sustainable drainage system promoted a new or existing ecosystem. A few responses suggested that internal drainage boards, where they exist, could be suitable organisations to maintain sustainable drainage systems.

## **Government response**

The Government welcomes recognition of the advantages of the flexibility in allowing developers to put in place a maintenance regime that is best suited to the local flood risk, locality and type of development. Further, it is the Government's view that everyone has a part to play in ensuring effective surface water management. All parts of local government, as Flood Risk Management Authorities, have an interest in ensuring that planning conditions on maintenance are fulfilled. The Government has given local government authorities the tools necessary to enforce the conditions they attach to planning permissions and local government would reasonably be expected to use those tools to ensure that sustainable drainage systems are effectively maintained long-term. Equally, communities will be alert to the risk of property flooding if systems are not properly maintained and will have an interest in reporting any non-compliance with planning conditions.

### **Q6. What evidence do you have of expected maintenance costs?**

### **Q7. Do you expect the approach proposed to avoid increases in maintenance costs for households and developers? Would additional measures be justified to meet this aim or improve transparency of costs for households?**

Only a small proportion of respondents offered a view on likely costs of sustainable drainage systems, with a significant number indicating that the evidence compiled by the Department for Environment, Food and Rural Affairs likely offered the most accurate picture. Those offering further comment underlined that maintenance costs had the potential to vary depending on the type of scheme in place and the topography, geology and geomorphology of the area. Figures offered were almost always the total general cost of maintaining an open space, rather than the cost of maintaining the sustainable drainage system within that open space. Where disaggregated costs were provided, there was no indication of the size of system, number of properties served or what the system actually comprised.

No respondents disputed the contribution sustainable drainage systems make to reducing flood risk. Furthermore, although 51% of respondents did not anticipate that this policy would avoid increases in maintenance costs, a significant number raised the monetised

and non-monetised benefits of sustainable drainage systems, such as reduced insurance premiums, suggesting that these could offset any perceived increase in maintenance costs. There was a keen emphasis on the importance of transparency of costs.

Some respondents to the consultation expressed concern as to how the costs of maintenance would be funded. There was a general assumption from local authority and developer respondents that commuted sums would be the norm. Respondents were concerned at the potentially large costs of such a sum and the difficulty of estimating a sum that was appropriate.

## **Government response**

The Department for Environment, Food and Rural Affairs commissioned independent research<sup>8</sup>, which has found that maintenance costs on average are no higher than the average charge for conventional piped surface water drainage. In addition, informal and limited discussions with developers and their service managing agents revealed that the actual figures for maintenance of some sustainable drainage systems within managed open spaces can be much, much lower (a typical example was circa £6 per property per annum). It is accepted, however, that maintenance costs might vary somewhat, owing to the type of system used, the drainage capability of the land and the extent of the maintenance required.

For the success of sustainable drainage systems, long-term maintenance arrangements need to be assured; developers will have responsibility for ensuring such arrangements are secured as a requirement of their planning conditions. Commuted sums paid by developers for maintenance of sustainable drainage must not be the default option; they do not provide a long term solution and we would expect this route to be appropriate only in a limited number of cases. Where local authorities opt to take on the long term responsibility, we would expect them to use their existing powers to charge for maintenance at cost recovery only. Where water companies take on responsibility for maintenance, the sustainable drainage system could be included either within their ordinary charging scheme or outside this scheme were the water company to offer its services as a Service Management Company.

## **Next steps**

The Government will make a Written Ministerial Statement to Parliament setting out next steps and the date that changes to planning policy would come into effect.

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<sup>8</sup> [http://randd.defra.gov.uk/Document.aspx?Document=11852\\_FinalIssueSWDReport\\_November2013.pdf](http://randd.defra.gov.uk/Document.aspx?Document=11852_FinalIssueSWDReport_November2013.pdf)