

# A British Property Federation response to: Delivering Sustainable Drainage Systems

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24<sup>th</sup> October 2014

## Section A: Background

### *BRITISH PROPERTY FEDERATION (BPF)*

1. The BPF represents companies owning, managing and investing in property. This includes a broad range of businesses comprising commercial property owners, the financial institutions and pension funds, corporate landlords, residential landlords, as well as all those professions that support the industry.
2. The BPF has a dedicated team for sustainability issues, reflecting the priority that its leading members place upon issues of climate change and resource efficiency. We also provide Secretariat support to the Green Property Alliance, a group of the leading organisations representing both landlord and tenant interests (Association of Real Estate Funds, Better Buildings Partnership, British Council of Shopping Centres, British Council for Offices, BPF, Investment Property Forum, Royal Institution of Chartered Surveyors, UK Green Building Council and the Urban Land Institute).

### *FOR FURTHER INFORMATION AND FOLLOW-UP*

3. We would be delighted to expand upon any aspect of this response and to provide further supporting information. Please contact in the first instance: Patrick Brown, Assistant Director (Sustainability and Construction), British Property Federation, 5<sup>th</sup> Floor, St Albans House, 57-59 Haymarket, London, SW1Y 4QX Tel: 0207 802 0108 Fax: 0207 834 3442 Email: [pbrown@bpf.org.uk](mailto:pbrown@bpf.org.uk)
4. Our response is not confidential.

### *APPROACH IN THIS SUBMISSION*

5. Our response addresses the issues raised in the Consultation from the perspective of developers and owners of non-domestic buildings, in order to ensure that their concerns are embedded in the design of a SuDS policy.

## Section B: Responses to Selected Consultation Questions

**Question 1: Do you agree that the proposed revision to planning policy would deliver sustainable drainage which will be maintained? If not, why?**

6. We are supportive in principle of the changes to the proposed SuDS regime. Our main rationale is that the originally planned SuDS approval process requiring compliance with complex legislation would have created a parallel application regime to the current decision-taking planning process, and would have slowed down development despite the attempts of all parties to the contrary.
7. We are also supportive of the proposal for a menu of different standards which would enable developers to select the maintenance arrangements which work best in different contexts. The heterogeneity of asset types in the commercial and wider non-domestic sector is significant and a private management arrangement may be suitable on a retail park under the stewardship of a single management company whereas such an arrangement might be less suitable for a large scale housing development.
8. In the case that committed SuDS were not delivered by a developer, credible sanctions exist via the planning system such as breach of condition notices, enforcement procedures and stop notices.

**Question 2: How should the local authority obtain expert advice on sustainable drainage systems and their maintenance? What are the costs/benefits of different approaches?**

9. We would expect SuDS to be included within the pre-application for a project, and to be dealt with via statutory consultees and planning officers as any other aspect of an application would be.

**Question 3: What are the impacts of different approaches for Local Planning Authorities to secure expert advice within the timescales set for determining planning applications?**

10. Please see our response to Question 2.

**Question 4: Do you agree that minor size developments should be exempt from the proposed revision to the planning policy and guidance? Do you think thresholds should be higher?**

11. We do not think that the thresholds should be set any higher. The policy should apply to all major commercial developments. There may be circumstances in which smaller developments are particularly vulnerable to flooding where SuDS may be justified as part of a package of measures in order to provide an acceptable level of resilience.

**Question 5: What other maintenance options could be viable? Do you have examples of their use?**

12. As the Consultation notes, Water and Sewerage Companies already have duties and can make charges relating to water and there is an association between their current activities and any new arrangements relating to managing surface water run-off. They are likely to be well-placed to provide ongoing maintenance of SuDS.

13. Existing mechanisms, such as via Sewers for Adoption, would enable developers to provide SuDS infrastructure, which would then be adopted by the Water and Sewerage Company. However, it would be important to ensure that a suitable charging mechanism was adopted which distributed costs equitably among commercial and household customers.
14. A potential alternative approach not rehearsed in the Consultation document approach would be for the expected financial cost of maintaining SuDS to be calculated, and a sum of money transferred to a ring-fenced public fund – similar to the commuted sums payable by a developer under a highways agreement for the maintenance of street furniture and the like. The land owner will be responsible for complying with the restrictions on the land going forward but if there are ongoing maintenance obligations on which money needs to be spent then these funds can be drawn down.

**Question 6: What evidence do you have of expected maintenance costs?**

15. No specific comments.

**Question 7: 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?**

16. Four maintenance options are set out in the Consultation:
- a. In the case of a service management company, occupiers would pay for SuDS maintenance as part of the annual service charge
  - b. In the case of a water and sewerage company, the charges would be included in the surface water drainage element of the household water bill and regulated by Ofwat
  - c. Where the SuDS provides advantages to the local community, some local authorities 'may wish to take on responsibility for the maintenance of sustainable drainage systems as part of their wider open space and amenity management function'
  - d. Where a simple SuDS system, serving a small number of properties, has been installed the owners of the properties could also agree to maintain the SuDS collectively if provided with full instructions by the developer
17. We have canvassed expertise in our membership and the general perception is that it will be difficult to achieve a general increase and improvement in flood mitigation and the ongoing maintenance of SuDS without some costs being incurred. Moreover, whether or not SuDS are able to invite cost savings will depend on the delivery route for maintenance arrangements: the competency of the organisation delivering maintenance, the resources and delivery infrastructure it has at its disposal, how many customers the SuDS serves (with the corollary being that costs may be concentrated or dispersed depending on whether SuDS serve a number of customers or only a very few).
18. It is therefore difficult to make a definitive statement as to whether SuDS will lead to higher costs. However, it is important to ensure that the benefits of flood mitigation are priced into assessments of likely costs of SuDS – it is anticipated that the frequency of flood events, and thus damage to property and infrastructure, will increase over the course of this century due to

climate change. The overall resilience of property to such events is important, not only from a normative way of life point of view, but also with regard to capital risk from monies invested in properties, potential planning blight from buildings damaged beyond light repair and economic damage to businesses.

19. Finally, it is worthy of note that of the four maintenance routes set out in the Consultation, each has a slightly different means of reaching the end customer, and are under slightly different methods of cost calculation and allocation: for example, in the case of a property management company, costs would be recovered from occupiers of the property on a 'not for profit, not for loss basis'. In the case of cost recovery via water and sewerage bills, this would be presumably via the regulated element of bills which are overseen by Ofwat and capped via Periodic Reviews of water charging (and thus some additional charges can be levied on maintenance charges). In the case of a local authority charging, this could be via a series of measures including business rates (where the amount paid is based on the rateable value of the hereditament) or council tax (based on the banding of the property) or Community Infrastructure Levy or a Section 106. In short, the cost allocation and recovery methods will differ in respect of each possible maintenance route (e.g. in the case of a Section 106 obligation, the ability of a property manager to recover the cost from occupiers may depend upon the terms of the lease and line items in the Service Charge).
20. If Section 106 arrangements are used to bind developers to the ongoing maintenance of SuDS, this obligation will apply to all future owners of the land. This is likely to mean that additional costs will arise for property owners in buying and selling properties owing to increased due diligence required around obligations to maintain SuDS (if the approach is taken whereby property managers take on the maintenance of SuDS).