

What the Flood and Water Management Bill means for property developers

Encouraging sustainable drainage as part of new developments

Using Sustainable Drainage Systems (SuDS) to manage surface water has a number of benefits, such as improving water quality and the local environment. However, they also provide an important function in reducing the risk of flooding of homes and businesses, as well as adjacent or downstream properties, as a result of heavy rainfall.

The Flood and Water Management Bill encourages the use of sustainable drainage in new developments and re-developments. It does this by requiring drainage systems to be approved, against a set of National Standards, before building can commence and a connection to the sewer can be allowed (if needed). It also makes local authorities responsible for adopting and maintaining SuDS.

These measures are necessary because despite positive planning policies, few SuDS are built as part of new developments, even though they can often be more practical and cheaper than conventional surface water drainage. There are powers to exempt some developments from the requirement to have their drainage systems approved, which can allow for a phased implementation, for example.

How these measures will work in practice

National Standards for sustainable drainage

National Standards for the design, construction, operation and maintenance of SuDS are being drafted and will be consulted on in spring 2010. These standards will set out the criteria on which the forms of drainage appropriate to any particular site or development can be determined. The National Standards will allow for local conditions to be taken into account, and will consider the costs and benefits of sustainable drainage approaches – including cost to developers.

Approval of drainage plans

The plans for the drainage system would need to be approved, before construction could start, by the SuDS Approving Body (SAB) which will be the unitary or county council for the area. This applies to both permitted developments and those that require planning permission. This will ensure that sustainable drainage systems are also included in construction that may cover large surface areas, but does not require planning permission.

Where both planning permission and SuDS approval are required, the processes will run together. Applications for the drainage system and for planning permission will be submitted together to reduce burdens for the applicant. The planning authority will notify the developer of the outcome of both the planning permission and drainage approval at the same time, including any conditions of approval. Regulations will set out a timeframe for the approval of drainage application by the SAB, so the planning process is not delayed.

This will encourage pre-application discussions – ideally between developers, planners, highways authorities and the SAB – to ensure that delays to the approval system can be avoided as far as possible. Pre-application discussions should ensure that SuDS are considered at the earliest stages of site design in order to maximise their use on the development and ensure a smooth approval process. SuDS will become a routine feature of new construction.

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Non-performance bond

As part of the approval process, the SAB might require a non-performance bond to be paid. This bond will be refunded in full if the work is completed to the satisfaction of the approving body. The size of the bond would not be greater than the cost to build the drainage system. This approach offers buyers reassurance by ensuring that the home owner or local taxpayer does not have to bear the cost of bringing drainage up to standard where a developer has failed to complete a SuDS, or not built it to the approved plan. The Bill contains a power for the Minister to issue guidance to local authorities on what amounts may be required for bonds.

Adoption of SuDS

Developers have long called for clear arrangements for the long-term maintenance of SuDS. The Bill delivers this by placing a duty on local authorities to adopt and maintain SuDS. This gives developers a further incentive to incorporate sustainable drainage in developments. SuDS assets that serve more than one property will be adopted and maintained by the local authority when it has been completed to their satisfaction. Highways authorities will be responsible for maintaining SuDS in roads to National Standards. The drainage system must function as approved, including any conditions, in the plans for the drainage system.

This also gives property owners certainty that the SuDS that serve their property will be maintained, and will continue to provide effective drainage for their homes and businesses.

The right to connect to the public sewerage system

The automatic right to connect surface water to the public network will cease. Connection of surface water to surface water or combined sewers will be dependent on the drainage system being approved by the SAB as meeting the new National Standards. The provisions amending the right to connect apply to surface water only, and do not apply to the connection of foul water to the sewerage system – the right to connect newly built foul sewers to the public network remains, but an adoption agreement must be in place with the relevant Water and Sewerage Companies (WaSC).

Appeals

The Bill enables appeals against decisions on approval, including where proposals for drainage systems have not been approved, and appeals against use of the bond if the SuDS have not been built to standard.

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Agreements on new non-SuDS drainage systems

WaSCs will be obliged to adopt and maintain new foul sewers connecting to the public system, and those (very few) surface water sewers with no SuDS alternative connecting to the public system. This provides assurance for developers and householders that sewers serving new developments will become part of the public sewerage network.

Adoption agreements will be required before connecting into the public sewerage system. The agreements may contain approaches that promote site flexibility and not stifle innovation but must contain provisions to ensure that:

1. New sewers are built in accordance with the proposed Government Build Standard, or, if preferred, alternative standards the developer chooses to agree with the WaSC; and
2. That the WaSC adopts the new sewers.

These particular provisions would not come into force until the Government Build Standard is published by the Secretary of State. The Government is committed to working with stakeholders, including developers, on the Build Standard. The Build Standard will harmonize current different WaSC adoption criteria into one unified national standard, and will be consulted on prior to introduction.

Developers will be able to appeal to Ofwat about agreements on a wider range of issues than they currently can – including disputes on the execution of the build standard.

The Bill will give the Secretary of State the power to make regulations on when an agreement is needed and on its contents, e.g. about the Build Standard, bonds and guarantees etc. The Secretary of State may also publish general guidance to which WaSCs (and therefore Ofwat) should have regard.