

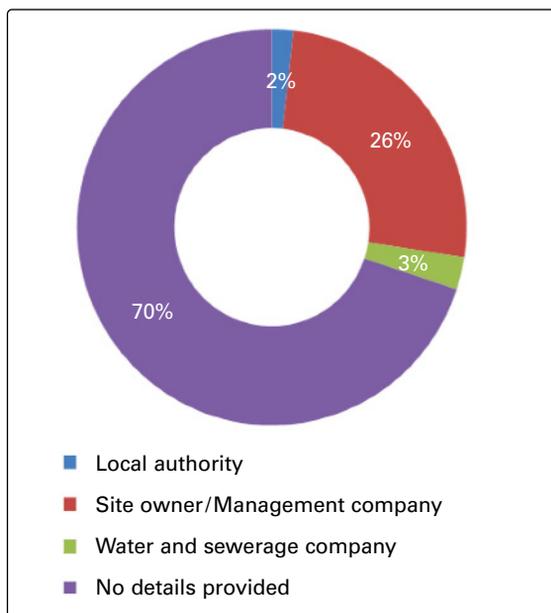
stewardship of SuDS



No apologies for poking a stick once more into the sensitive subject of stewardship. Making arrangements for stewardship of public open space and assets in perpetuity at no cost to present and future residents and businesses is (or should be) one of the main strategic tasks for a town-builder. The government is feeling its way down the corridor that must surely lead to the same conclusion.¹

If that scope of arrangements is not made, the landowner/town-builder takes a super-profit (the costs of an 'adoption' arrangement of some kind would have been factored into their development appraisal and land value discounted accordingly); property owners are burdened with an additional local tax from a barely accountable commercial management company for ever; and public spaces and associated assets are Balkanised, as those paying for upkeep can become proprietorial and seek to privatise the areas within gated communities or behind fences with locked gates. Hectares of public space handed by developers to commercial management companies with the right to raise a levy in perpetuity will be very difficult to retrieve for the public domain unless the government's aspirational talk about stewardship is turned into enforceable reality.

Planning policy is not yet tight enough. The new National Planning Policy Framework (of July 2018) wishes to achieve 'well designed places' (Section 12), and seeks to stop degradation of developers' initial promises as the layers of detailed planning process pass through. Managing flood risk must ensure that 'the development will be safe for its lifetime'. But the NPPF does not call for the management and maintenance regimes being set up to work in perpetuity – the tone is to make a planning proposal good enough (and impacts mitigated enough) to be approvable, but no interest is expressed in how maintenance of the approved regimes is to be sustained. Planning Practice Guidance (PPG – the voluminous and sporadically



Who will maintain the SuDS?

Source: Figure 10 in *A Review of the Application and Effectiveness of Planning Policy for Sustainable Urban Drainage Systems (SuDS)*³

updated text which allows the NPPF to be said to have reduced the quantity of planning policy) has the same flaw.²

Against that background, during the summer holidays the Ministry of Housing, Communities and Local Government published *A Review of the Application and Effectiveness of Planning Policy for Sustainable Urban Drainage Systems (SuDS)*.³ SuDS are managed surface water drainage systems which not only help to reduce the causes and impacts of rainwater flooding, but are built in a form (typically of surface rills, and wet and dry balancing lakes, sometimes with reed beds and boggy areas) which can slow the rate of surface water run-off to reduce downstream flooding while providing additional benefits such as removing pollutants from urban run-off and incorporating space for recreation and wildlife.⁴ In Milton Keynes and Peterborough New Towns these have been embedded as a major feature of their masterplans since the late 1960s, but they have been good practice generally since the 1980s.

The review took place four years after consultation on SuDS⁵ had led to stiffened planning policy in the form of a Written Ministerial Statement,⁶ which, happily, took us to the stewardship issue:

'This will make clear that the Government's expectation is that sustainable drainage systems

will be provided in new developments wherever this is appropriate.

'To this effect, we expect local planning policies and decisions on planning applications relating to major development – developments of 10 dwellings or more; or equivalent non-residential or mixed development ... – to ensure that sustainable drainage systems for the management of run-off are put in place, unless demonstrated to be inappropriate.

'Under these arrangements, in considering planning applications, local planning authorities should consult the relevant lead local flood authority on the management of surface water; satisfy themselves that the proposed minimum standards of operation are appropriate and ensure through the use of planning conditions or planning obligations that there are clear arrangements in place for ongoing maintenance over the lifetime of the development. The sustainable drainage system should be designed to ensure that the maintenance and operation requirements are economically proportionate.' [Emphasis added]

The writer cannot help emphasising the unhelpful destabilising drafting contribution from the Cameron government's weasel word factory – it wasn't necessary and it doesn't help anyone.

The review of the application and effectiveness of planning policy for SuDS aimed 'to gauge how the new policy is being implemented, and meets the statutory duty in the Housing and Planning Act 2016 (Section 171) for a review of planning legislation, government policy and local planning policies concerning sustainable drainage in relation to the development of land in England'.

With regard to stewardship, the review is not a cheer-up: 80% of Local Plans, and 90% of emerging plans, call for SuDS in areas 'at risk of flooding', but 'Only 33% of adopted local plans were found to specify that clear arrangements should be in place for ongoing maintenance of the SuDS over the development's lifetime. This figure increased to approximately 60% when emerging local plans policies were considered at the application stage'. This did not mean that maintenance was not considered at the application stage, says the review, but that the aftercare was overlooked.

A key message from the review is that: *'Maintenance requirements are understood by larger developers, with a reliance on management companies [with the local authorities saying] that applicants' understanding of requirements for*

SuDS maintenance was inconsistent, with the larger housebuilders appearing to demonstrate a better understanding than smaller, more locally-based developers.

Local planning authorities (LPAs) and local flood risk authorities both suggested that:
'specific concerns around adoption and maintenance, specifically the costs, were given as reasons for applicants not including SuDS in their planning proposal. They reported that developers often default to management companies due to concerns that other potential maintenance providers, for example local resident's groups, lack the knowledge and skills to adequately manage a SuDS. One third of LPA officials were unsure of the extent to which SuDS were adopted as agreed, and some officials interviewed suggested that more clarity is needed in planning policy around adoption and maintenance arrangements.'

The review says 'Finally, in considering who will own and/or be responsible for maintaining the SuDS once constructed, the evidence suggests that for 70% of SuDS, it is unclear from the planning application documentation which entity will be responsible ...'

That covers the ground from which this particular column launched. Smaller developers steer clear of SuDS altogether if they can, because of fear of cost. That means the necessary burden on land values clearly stated in planning policy was not foreseen by them. Large developers like to pass the management burden 'for the life of the development' onto management companies for reasons not chased up in the review but which are likely to include the fact that they won't have to endow them to be maintained in perpetuity.

For SuDs read public green infrastructure and its related assets as a whole. This issue isn't going to go away.

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Notes

- 1 See the encouraging words quoted from the New Towns Act 1981 (Local Authority Oversight) Regulations 2018 (Jun. 2018) and the government's formal response to the National Infrastructure Commission (NIC) report *Partnering for Prosperity: A New Deal for the Cambridge-Milton Keynes-Oxford Arc* (Oct. 2018) elsewhere in this issue, in D Lock: 'Establishing a Local New Town Development Corporation'. *Town & Country Planning*, 2018, Vol. 87, Dec., 487-91

- 2 Paragraph 021, 'Who will manage Local Green Space?', (Reference ID: 37-021-20140306, last revision date: 6 Mar. 2014) of the 'Open space, sports and recreation facilities, public rights of way and local green space' section of PPG only says, lamely and ineffectually, 'Management ... will remain the responsibility of its owner. If the features that make a green area special and locally significant are to be conserved, how it will be managed in the future is likely to be an important consideration. Local communities can consider how, with the landowner's agreement, they might be able to get involved, perhaps in partnership with interested organisations that can provide advice or resources.'
- 3 *A Review of the Application and Effectiveness of Planning Policy for Sustainable Urban Drainage Systems (SuDS)*. Ministry of Housing, Communities and Local Government, Aug. 2018. www.gov.uk/government/publications/a-review-of-the-application-and-effectiveness-of-planning-policy-for-sustainable-drainage-systems
- 4 The Environment Agency established a SuDS website in 2001 (now at www.susdrain.org/), which provides case studies, newsletters, a review of SuDS-related research and background on SUDS. Or for more detail see, for example, JB Ellis, RBE Shutes and MD Revitt: *Constructed Wetlands and Links with Sustainable Drainage Systems*. R&D Technical Report P2-159/TR1. Urban Pollution Research Centre, Middlesex University, for the Environment Agency, 2003. Available at <https://eprints.mdx.ac.uk/6076/1/SP2-159-TR1-e-p.pdf>; *SUDS Techniques – Hydraulic, Structural and Water Quality Issues*. Science Summary P2-261/20/SS (SC020086). Environment Agency, Aug. 2005 (summarising CIRIA Report C609, referenced as P2-261/20/TR, *Sustainable Drainage Systems – Hydraulic, Structural and Water Quality Advice*). Available at www.abg-geosynthetics.com/request-reference-material.act?target=25; and *Cost-Benefit of SUDS Retrofit in Urban Areas*. Science Report – SC060024. Environment Agency, Nov. 2007. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/290993/scho0408bnxz-e-e.pdf
- 5 *Consultation on Delivering Sustainable Drainage Systems: A Summary of Responses to the Consultation and the Government Response*. Department for Environment, Food and Rural Affairs and Department for Communities and Local Government, Dec. 2014. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/388941/suds-consult-sum-resp-201412.pdf
- 6 *Sustainable Drainage Systems*. Written Statement (HCWS161), by the Secretary of State for Communities and Local Government (Mr Eric Pickles). House of Commons, 18 Dec. 2014. www.parliament.uk/documents/commons-vote-office/December%202014/18%20December/6.%20DCLG-sustainable-drainage-systems.pdf