

# CONSULTATION RESPONSE



Learning Lessons from the 2007 Floods

28 March 2008

## **HBF Response to the Interim Report on the Pitt Review - Learning Lessons from the 2007 Floods**

### **Introduction**

The HBF welcomes the opportunity to provide Sir Michael Pitt with our comments on the Interim Report.

The content and detail contained in the Report provides a graphic account of how flooding can be a most devastating experience for those affected. Moreover, the Report sets down a number of recommendations relating to new development, some of which are also areas of concern recognised by the HBF for many years. However, despite years of lobbying and consultation with the relevant organisations these issues have not been resolved.

That said we would make specific reference to the joint report recently published by the Centre for Ecology and Hydrology (CEH) and British Geological Survey (BGS). The outcome of the work undertaken by these two highly respected and acclaimed UK organisations can be found in their 'appraisal' published on 11 March 2008 – "The Summer 2007 Floods in England and Wales – A Hydrological Appraisal". The findings and recommendations contained in this latest publication provide us with a realistic assessment of the 2007 floods, placing these in a sensible and appropriate (statistical) context. Importantly the review concludes by stating that the events of 2007 were in the extreme and that they should not be construed as being entirely indicative and/or associated with climate change. The CEH/BGS report accepts that further research work is required but cautions against an immediate revision of established sewer design and/or flood risk assessment criteria in the absence of sound science and more robust rainfall data.

Moreover, in their response to the House of Commons Public Accounts Committee (July 2007) and as part of the investigation process specific to the 2007 floods, the Environment Agency not only conceded that the rainfall events were in the extreme but that they (the EA) had failed in their duty to effectively maintain a considerable number of strategic river corridors. Unfortunately, effective and routine maintenance of main river channels by the EA has been a vexed issue for the HBF for many years.

As an Industry we are constantly accused of exacerbating the risk of flooding due to what is seen by the media and public as the substantial increase in new homes. In addition we are often accused of making a limited or no financial contribution to the infrastructure and/or the effective management of surface water 'run-off'. In reality, nothing could be further from the truth.

The increase in new homes across England and Wales constitutes less than 1% per year when compared with the existing housing stock; out of this, 70% of new homes are constructed on land that has had a previous use. More importantly, the historic impermeability of these sites is usually quite high and redevelopment with housing often results in a much lower surface water run-off, thereby reducing the load on existing surface water sewerage infrastructure.

In relation to making a financial contribution, since privatisation in 1989 our industry has contributed circa £0.7 billion to Water and Sewerage Companies (WaSC) in the guise of Sewerage Infrastructure charges. Regrettably, there seems to be no mechanism for WaSC to identify where and how these funds have been invested in order to meet the needs of a plan-led planning system.

From the perspective of new development, an issue we have repeatedly highlighted in response to Government reports over a number of years is the lack of 'joined up' Guidance that exists in the management of surface water. The way forward in this area is to compile 'Guidance' for new developments which is integrated and which is sufficiently flexible to allow for a number of disposal/dispersion options to be considered. Although as the Interim Report has identified, until SUDS has some form of legal status, their use will be somewhat restricted by the issues of maintenance and adoption. Matters are further confused due to the variance in design criteria for

surface water sewers. Current design requirements state that we are to design for a 1 in 30 year event and yet the requirements of the Environment Agency are for a development to be modelled to show compliance with a 1 in 100 year event. We find it even more farcical when our members tell us that WaSC will not adopt surface water attenuation/sewerage infrastructure where Environment Agency design criteria must be seen to prevail. Overall the lack of integration highlighted by the HBF in the past will hopefully be addressed by this Interim Report and the recently published Defra consultation on “Improving Surface Water Drainage”, the title of which would more appropriately have used the word “Management” in place of “Drainage”.

To conclude our comments on the more generic issues, since HBF has played an integral part in the drafting of PPS 25 and its Companion Guide we would consider that we have the requisite experience and expertise to make an effective contribution to the development of any new guidance. As an Industry we support the principle of ‘Managing Surface Water’ in a sustainable way, namely, that the new development should “mimic” the historic surface water discharge from the site, particularly in those sensitive locations where it has the propensity to contribute to an existing flooding problem. Unfortunately, these principles are not readily accepted by the Environment Agency or the WaSC. The PPS25 Companion Guide, which in its present form remains as a live draft and which is about to be updated following a recent round of comments, will be an ideal opportunity for the Planning Process to give some clear direction - the HBF will wait with interest to see the output from this latest round of consultation. We would also want to convey to the Review Panel that removing the “right to connect” for surface water connections will not be a constructive way forward and we would recommend an alignment of this issue in relation to the principles of PPS25 – we have expanded on this issue in subsequent sections of our response.

For the ease of communication we will now focus our comments on a number of specific issues contained in the Interim Report and which are relevant to new housing developments.

## HBF Comments on the Interim Conclusions

**IC 1** *The interim conclusion of the Review is that Government takes the lead in making the case for the need for adaptation to Climate Change and particularly in mitigating the potential impacts on communities.*

We would whole heartedly support this conclusion and in the HBF's Response to the APPG Inquiry Panel on the "Future of the Water Sector", we highlighted the lack of leadership in a variety of areas. This can be no better demonstrated than in the Guidance of Sewers for Adoption. This document is managed by WaterUK and WRC and whilst the HBF is part of the Steering Group, it has a limited amount of influence in terms of the Guide's content. On the rare occasions when both Defra and Ofwat have attended Steering Group Meetings (as observers) they have been somewhat concerned about some bodies' reluctance to compromise on certain issues. Essentially national guidance is being formulated and agreed by a trade association acting for a collection of commercial organisations. That said we do acknowledge and appreciate WaterUK's help in trying to progress issues.

**IC 3** *The interim conclusion of the Review is that the Environment Agency further develops its tools and techniques for predicting and modelling river flooding, especially to take account of extreme and multiple events; and takes forward urgently work to develop similar tools and techniques to model surface water flooding.*

Mindful of the content of the recent CEH/BGS Report, this is essential in order to enable developers and planners to understand the flood risk from surface water that may arise from new developments - this data should then be taken forward to inform Strategic Flood Risk Assessments and Surface Water Management Plans.

**IC 8** *The interim conclusion of the Review is that PPS25 should be rigorously applied by local planning authorities, including giving consideration to all sources of flood risk and ensuring developers make a full contribution to the costs both of building and maintaining any necessary defences.*

We would express some concern about the commentary which supports this interim conclusion. PPS25, if applied correctly, is not a “get-out clause” when applying the exception test as consideration has to be given to the SFRA and the site FRA. The location, estimated ‘run-off’, hydro-geology and the subsequent management of surface water are key elements associated with the development of any site and the undertaking of a robust FRA. If applied correctly, then the problems typified at Cypress Gardens in Gloucester should not materialise.

On the matter of developers making full contributions to the cost of flood defences, where this is apportioned to the site being developed this should not be a problem. However if this involves contributions to cover a historic lack of investment in the surface water infrastructure we would express a concern about the implications.. It is too simplistic to portray this issue in such terms. Any FRA needs to be sufficiently detailed that it includes not only a strategy but also a direction on what needs to be done to assess the Flood Risk and who is required to contribute to the flood defences. The Planning system is not a mechanism to extract betterment out of developers, although it does sometimes appear that WaSC believe that it should be used this way..

**IC 10 *The interim conclusion of the Review is that the automatic right to connect surface water drainage of new developments to the sewerage system should be removed.***

It is interesting to note the comment by the householder in Barnsley on page 42 and this reflects our sentiments about the funding by WaSC in the introduction. It is also worth adding that the WaSC do obtain from developers an asset, (requiring virtually no maintenance) at no cost to them which then provides them with revenue in perpetuity from householders. There is little transparency or accountability in how Ofwat manages these revenue streams. **This is the only example in the commercial world in England and Wales where one commercial organisation gifts an asset to another commercial organisation so that they may make a profit from that asset in perpetuity. Moreover, we should not lose sight of the fact that WaSC also operate with monopoly privileges which some would argue is anti-competitive.**

On the substantive issue of the “right to connect” under Section 106 of the Act for Surface Water, we see that this has been circumvented by PPS25 and the need to produce a FRA with a planning application. If the principles of PPS25 are reflected in the “right to connect” this should not be removed but should replicate what surface water arrangements exist at present, be it ‘Greenfield’ or a connection from a previously developed site.

This also brings into question the duties placed on WaSC under Section 94 of the Act where they have to **effectually drain** their area and inevitably the buildings therein. . Problems have arisen in the past because where a WaSC has not provided the necessary surface water infrastructure for connections to be made, or made the relevant infrastructure improvements or reinforcements to accommodate surface water ‘run-off’ – see earlier comments regarding the investment of accumulated sewerage infrastructure charges.

Rather than the removal of the “right to connect” for surface water surely what is needed is dedicated ‘joined up’ and pragmatic guidance in this area which also respects extant statutes, including established land drainage law? This should extend beyond conventional sewerage systems to embrace not only developers meeting the requirements of PPS25 and FRAs but also SuDS as well as Sewers for Adoption - a point HBF has highlighted to CLG, Defra and Ofwat on many occasions in the past.

**IC 11** *The interim conclusion of the Review is that no new building should be allowed in a flood risk area that is not flood-resilient, and that the Government should work with organisations such as the Royal Institute of British Architects and the building industry to encourage flood-resilient building and development design.*

**IC 12** *The interim conclusion of the Review is that Government should incorporate flood resistance and resilience requirements for new properties in flood risk areas into Building Regulations as part of the current process of revision.*

It is difficult to make a case against the above two Interim Conclusions, albeit they can be distilled into what is an ‘acceptable level of risk’. However, we would not

necessarily advocate that new developments should be built in areas that are going to be subjected to repeated flooding - this is what PPS25 tries to address. However it would be more sensible to assess the risk and decide on the appropriate mitigation measures including the construction specification of the intended dwellings.

Our concern with this is that the ABI would seek to influence Government to require all homes to be built to a flood-resilient standard as part of the Building Regulations to mitigate their future claims. As with all issues of this nature there is a need to ensure a sensible balance is struck and more Building Regulations in this area will need to be tempered with regard to what they intend to address be it flood-resilience or flood-resistance. That said 'flood-resilient' would be a difficult concept to sell to a prospective purchaser of a new home..

**IC 17** *The interim conclusion of the Review is that local authorities should lead on the management of surface water flooding and drainage at the local level with the support of all responsible organisations including the Environment Agency, water companies and internal drainage boards, the Highways Agency and British Waterways.*

We are pleased to see this Interim Conclusion as a need for a co-ordinated leadership approach is long overdue.

**IC 18** *The interim conclusion of the Review is that local authorities in flood risk areas should assess their capabilities to deliver the wide range of responsibilities in relation to local flood risk management.*

**IC 19** *The interim conclusion of the Review is that the Environment Agency should have a national overview of all flood risk and that, Defra's work on the development of a national overview role for the Agency in relation to surface water flooding should be progressed.*

Again, we would endorse these two Interim Conclusions.

**IC 20** *The interim conclusion of the Review is that local Surface Water Management Plans, as set out under PPS25, should provide the basis for managing surface water flood risk. These plans should be co-ordinated by the local authority and be risk-based, considering all sources of flooding.*

The HBF would welcome comprehensive information contained in SFRA's and SWMPs. Such information would aid developers in providing FRAs for proposed developments. It will also allow them to understand what flood risks, if any, might be relevant to an assessment of a site. Again this is an issue that the HBF has raised over many years with various organisations, including the Environment Agency.

**IC 22** *The interim conclusion of the Review is that Defra should issue Guidance on how all organisations can be brought together to work with local authorities on surface water flood risk management, sharing information, modelling and expertise on a consistent basis.*

We feel that Defra needs to go further than just producing 'Guidance' on how organisations should work together. There is an urgent need, as stated in our Introduction, for 'joined up' Guidance on how surface water can be more effectively managed. This Guidance needs to bring together all of the relevant information relating to river catchments, sewers and SuDS, with an approach that informs all stakeholders on how to manage surface water from pre-site enquiries, through the planning process, during construction and beyond the completion of a development.

**IC 23** *The interim conclusion of the Review is that the Government, as part of its Water Strategy, should resolve the issue of which organisations should be responsible for the ownership and maintenance of sustainable drainage systems.*

Yet again this Report has been able to bring to the fore an issue which the HBF has raised with Government for many years. We have also suggested that the maintenance funding of SuDS could be available from WaSC as the use of on-site SuDS bypasses their duty under the Water Industry Act 1991 to provide off-site sewers for building under Section 94 of the Act. In many cases the ongoing cost to



maintain SuDS could also be forthcoming from residents, assuming that they continue to pay their surface water charge to a WaSC. The problem that exists is that WaSC are adamant that under the Act their duties do not extend to maintaining SuDS. Although it is interesting to see that some WaSC are now taking a more proactive approach and are starting to change their attitude towards adopting SuDS. It does seem somewhat perverse that an entrenched position adopted in the past citing a lack of responsibility in legislation, can be seen to be altered by adverse media reporting and possible political pressure.

**IC 24 *The interim conclusion of the Review is that Defra should work with Ofwat and the water industry to explore how appropriate risk-based standards for drainage systems (including pumping stations) can be achieved.***

We are totally in agreement with this Interim Conclusion but would suggest that the house building industry should be an integral part of any future Working Party and/or Steering Group. However in 4.41 the inference is that developers have some responsibility for installing sewers to 1 in 30 year design. The criteria set out for this 1 in 30 year event is as specified by WaSC (without any over-arching scientific rationale) not Developers. We only design and construct sewers to these criteria as instructed by these same WaSC. However, how this return period has been derived and justified has never been explained to the HBF, despite our long association and participation with Sewers for Adoption. That said on many occasions we have made it known to the SFA Steering Group and to WaterUK that there is an underlying and frustrating level of conflict which occurs between WaSC and the Environment Agency – it remains unresolved.

The final point that we would wish to make on this issue is that if the principles of PPS25 are adopted in terms how surface water should be managed then the detail appertaining to how sewers and SuDS operate in certain rainfall events needs to be applied in a way that is seen to be “fit for purpose”. The requirement of a universal standard, say of a 1 in 500 year event would be totally inappropriate and without substance. As we have stated earlier in this response better targeted research leading to sound robust guidance is imperative.

**IC 25** *The interim conclusion of the Review is that, as part of the forthcoming water industry pricing review, the water companies, in conjunction with local authorities and other partners, should develop proposals for investment in the existing drainage network to deal with increasing flood risk.*

As we stated in our introduction, the house building industry has contributed over £0.70 billion to WaSC just in relation to Sewerage Infrastructure Charges. It is also worth considering that over 3 million people have purchased new homes since 1989 and the revenue stream from this source direct to WaSC is substantial. The house building industry continues to provide income-generating assets for free – surely it is not unreasonable to expect a significant part of this income stream to be invested by WaSC in new and innovative infrastructure (SuDS) to meet the Government's housing objectives?

There is a compelling argument to be made that WaSC should replicate the process whereby developers receive payment for providing water supply infrastructure – why should sewerage infrastructure be exempt? To date sewerage infrastructure is gifted to WaSC at no cost to them and the final benefit they receive in perpetuity is substantial – this estimated to be well in excess of £0.3 billion over a ten year period. It seems to be manifestly inequitable that WaSC should be able to make profits in such a way without any re-investment in new and/or improved infrastructure. At present it is the development industry that bears all the risk, cost and future investment commitment.

**IC 26** *The interim conclusion of the Review is that local authority scrutiny committees review SWMPs and other linked plans, such as Local Development Frameworks and Community Risk Registers, to ensure that flood risk is adequately considered and to ensure greater transparency and progress in the management of that risk.*

The concept of transparency in this Interim Conclusion is of the upmost importance and coupled with clearly defined levels of accountability it will enable more informed decisions to be made in the management of flood risk.

**IC 33** *The interim conclusion of the Review is that flooding legislation should be updated and streamlined under a single unifying Act that amongst other outcomes addresses all sources of flooding, clarifies responsibilities and facilitates flood risk management.*

In providing our comments on this Interim Report it was necessary to highlight issues such as IC33 and it is reassuring to note that they are at last being given some consideration. Clearly, the establishment of an over-arching body responsible for all strategic surface water drainage matters is an essential requirement if we are to remove the confusion that exists and for all stakeholder interests to make progress.

## **Conclusion**

The house building industry welcomes the comprehensive and thorough manner in which this Interim Report addresses a number of vexed issues whilst confirming the necessity for clarity, effective leadership, accountability, and co-ordination. It is even more reassuring that many of the Interim Conclusions, relating to new development, have been matters which the HBF has been bringing to the attention of Government, WaSC and the Environment Agency for many years. Although we have some concerns over IC10 and the removal of a statutory right of connection to the public sewerage system, the introduction of sensible and pragmatic guidance in this area may prove to be more acceptable. That said there would still be a case for specific Guidance in this area which reflects the requirements of PPS25.

To conclude, we would reiterate our support for the Interim Report and would welcome the opportunity to participate in any further reviews/discussions where the HBF's knowledge and expertise would be of value to the Pitt Review Team.

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