HOME BUILDERS FEDERATION

Huw Irranca-Davies MP
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR

14th January 2010

Dear Minister,

Flood & Water Management Bill

I am writing to request an early meeting with you to discuss a number of significant issues affecting housing delivery that arise from the proposed provisions and possible amendments to the Flood and Water Management Bill.

While the HBF is generally supportive of the proposed changes in the Bill, its provisions would in certain crucial respects pose real risks to the delivery of much-needed new housing. We have set these issues out in the attached note – they cover broadly the lack of clarity or completeness in defining responsibilities and rights among the relevant parties involved in water management for new residential development, the proposed National Standards for SUDS and Sewers, regulatory risk relating to the proposed SUDS Approval Bodies (SABs) and the need to consider the implications of future new homes built to high levels of water efficiency. Overall the combined effect of these issues if not addressed would be to increase development risk and cost – so undermining housing delivery and development viability. Our wish therefore is to ensure the Bill's chief objectives can be met in ways that would not have such adverse consequences for future residential development.

In addition, we are extremely concerned by some of the recent amendments (notably NC14 and NC 20) to the Bill tabled on 15th/16th December which are to be presented for consideration at the Bill's forthcoming Committee stage.

Home Builders Federation
1st Floor . Byron House . 7-9 St. James's Street . London SW1A 1EE
T: 020 7960 1600 F: 020 7960 1601 E: info@hbf.co.uk www.hbf.co.uk

HOME BUILDERS FEDERATION

We would urge the Government not to accept these amendments which touch vitally on the key issue for house builders of "the right to connect" and the position of Water and Sewerage Companies (WaSCs) in the planning and decision-making process.

We note in this respect that the consultation resulting in the Bill did not seek to remove the statutory right of connection to the public sewerage system. Amendment NC14 would, however, seek to remove this right. Moreover, it would run counter to the recent decision handed down by the Supreme Court on 9th December 2009 in Barratt-v-Welsh Water. (A copy of this fundamentally important decision is attached).

The effect of amendment NC 14 would be to put the UK house-building industry at the mercy of Local Planning Authorities and Sewerage Undertakers (WaSC's). The prospect of subjective criteria being applied, accompanied by possibly significant adverse cost repercussions would be real. In sum, any proposal of this kind would provide no safeguard at all for house builders against potentially excessive and inequitable demands being placed on them in terms of providing and/or improving off-site sewerage infrastructure. Such an outcome could only serve to frustrate the supply of new homes.

This concern is compounded by the proposals contained in amendment NC 20 seeking to make the WaSCs a statutory consultee. If such an amendment were successful, then for the first time, this would create the situation of a private company with monopoly privileges potentially being able to use the planning process to further aims to its own commercial gain/advantage. Again the impact on the cost of new homes and the delay in the provision of much needed new housing could be very significant.

Beyond our immediate concern with these two proposed amendments to the Bill, our wider concerns about the need for more clarity and rigour in the definition of rights and responsibilities under the Bill is linked to the fact that since the Water Industry Act 1991, UK House-builders have paid over to WaSCs in excess of £1.25 billion in the guise of infrastructure charges. These payments have been intended to meet the future infrastructure needs of a plan-led planning system. In addition, the assets house builders transfer to WaSCs by virtue of Section 104 of the Act are done so for free, that is without payment of any consideration to developers.

These assets and infrastructure charges provide a substantial source of income for WaSCs for investment in new sewerage infrastructure. Regrettably, however, there has been little evidence of such investment on the part of Sewerage Authorities and we contend that this in turn has contributed to flooding problems associated with certain sewage networks. It is for this reason that we believe a crucial element missing from the Bill is a requirement under the proposed National Standards for infrastructure providers themselves to meet realistic performance standards for the delivery of services. In this respect, the Judgement handed down by the Supreme

HOME BUILDERS FEDERATION

Court crystallises a number of issues is terms of sewerage infrastructure provision in general and it seems most appropriate that the passage of the Bill should give the findings of such an important Court decision full weight.

We would be grateful for your urgent consideration of the issues set out in this letter and the attached note. (To assist we can also make an extended technical note on the issues available to you and your officials if you wish.) Time is clearly of the essence. The timetable for the Bill is tight. It is also necessary in the short-term to consider the potential costs and risks arising for house builders in the context of the Government's announcement in the Pre-Budget Report that it is to establish a national baseline of regulatory burdens and costs affecting the industry in order to prevent these becoming a barrier to housing delivery. This work is being conducted by CLG in time for the 2010 Budget.

In view of the importance of the issues raised in this letter for housing delivery, I am copying this letter to John Healey at CLG and Ian Lucas at BIS.

Yours sincerely,

John Slaughter
Director of External Affairs

Member of the U.E.P.C. European Union of Developers & Home Builders

Home Builders Federation
1st Floor . Byron House . 7-9 St. James's Street . London SW1A 1EE
T: 020 7960 1600 F: 020 7960 1601 E: info@hbf.co.uk www.hbf.co.uk

CONSULTATION RESPONSE

FLOOD AND WATER MANAGEMENT BILL

14 Jan 2010

SUMMARY OF ISSUES FOR HOUSE BUILDERS

National standards for SUDS

The Federation supports the objective of establishing effective national standards for SUDS that fairly balance the rights and responsibilities of the relevant parties and provide safeguards for developers against undue costs or risks arising from the provision of SUDS. We would ask the Government in this respect to ensure that the provisions of the Bill give greater clarity than they do as currently drafted on the criteria that should be adopted in drawing up national standards under its enabling powers.

In particular, we believe the Bill should require the adoption of a "hierarchical approach" to the drawing up of standards. Such an approach would ensure that the appropriate sequence of issues was considered in drafting the standards – namely beginning from the requirements of a sustainable remediation strategy for sites that are deemed contaminated, followed by consideration of prevailing ground conditions and then other general requirements such as those stemming from the Groundwater Directive and the recently introduced Groundwater (England & Wales) Regulations 2009.

We believe this would be a useful and positive improvement to the Bill providing more confidence that national standards would be workable from the development and wider perspectives, without compromising our wider EC Directive responsibilities.

The "right to connect" SUDS

It remains essential for house builders and developers that the "right to connect" SUDS to the public surface water sewer network is maintained provided the necessary consideration of proposed SUDS has been undertaken under PPS 25 and through discussion with the Environment Agency. This is particularly relevant for those sites where there is no option other than to rely on storm-water attenuation/storage before discharging (at a rate approved by the Environment Agency as part of the FRA) to the public surface water sewerage system.

Without the safeguarding of this right subject to agreed procedure, house builders would be placed in an extremely difficult position that could prevent their developments being

completed and sold due to the resultant uncertainty for prospective home purchasers and difficulties in obtaining mortgage finance..

SUDS Approval Body (SAB)

We are concerned about the potentially significant regulatory risk that could arise from the operation of the proposed SAB system.

Our primary concern is related to the fact that the SAB will be a separate decision-making body that is not itself part of the planning decision for developments. This means that the SAB's consideration of a proposed SUDS for a new residential development could hold up the project even when the planning approval for this had itself been obtained. It would, however, be impossible to commence the development unless the SAB had made its decision and arising from that decision, the completion of a Section 104 agreement where connection to the public sewerage system is still required..

In this regard, our complementary concern is that there is a lack of experience, resource and knowledge within local authorities to operate the SAB system efficiently.

We would therefore ask the Government to give urgent consideration to how it can be ensured that the operation of SABs does not add an additional regulatory burden, delay and risk to residential development.

SuDS & the Sewer Requisition Process

There is a serious flaw in the FWMB in that it does not appear to carry forward existing legislation that allows for the requisitioning of off-site sewers across third party land – ref Section 98 of the Water Industry Act 1991. In those instances when the approved sustainable surface water drainage strategy for a site relies on on-site storage/attenuation in either enlarged sewers or underground tanks, or open ponds, the outflow from these facilities may still need to connect to either a public surface water sewer or watercourse. Where the outfall point is on third party land, in the past Section 98 requisitions have effectively removed the constraint and at nominal cost. Unless the ability to requisition is maintained, then there is every prospect of new development opportunities being ransomed by third parties.

Alternatively, house-builders may be subjected to incurring substantial compensation demands so as to acquire the right to lay an outfall sewer across third party land to the point of outfall. Stokes-v-Cambridge set the level of compensation which can be as much as a 33% of the land price. This flaw in the intended legislation must be corrected if the Government's

housing objectives are not to be seriously compromised or for house-builders to be saddled with unnecessary and inequitable financial burdens.

Bonding

We also wish to draw to the Government's attention the additional risk to development that the Bill's provisions on bonding for SUDS and adoptable domestic drainage (MBS) could entail.

As drafted, the Bill would allow for developers to be required to provide bonds for up to 100% of the capital costs of both the SUDS works and the adoptable element of the domestic drainage system.

We believe the scope for this level of bonding is unwarranted when set against the low risk that is actually entailed for Water and Sewerage Companies, particularly when it comes to MBS, given the conservative design standards that will be used. In Sewers for Adoption any bonding provision has always been limited to 10% and we do not see the case for a change from this. We would therefore ask the Government to reconsider this issue.

The importance of this issue is all the greater in current market circumstances as the capacity of the bonding market has been constrained, resulting in one leading provider – Zurich – withdrawing from the market. Alternative bank finance would necessarily be more expensive and therefore further directly affect the viability of development.

Right to connect foul sewers

It is essential for developers that the right to connect foul sewers is maintained.
In view of the improved levels of water efficiency that new development will meet in future under Part G of the Building Regulations we see no case for qualifying this right and urge the Government not to accept any amendments to the Bill that would reduce or end it.

The cumulative impact of regulation on housing delivery

All the issues raised in this note would to a greater or lesser degree potentially add to regulatory risks and costs for house builders if not satisfactorily resolved.

These issues should therefore be actively considered in the context of the Government's current establishment of a national baseline of regulatory burdens and costs affecting the industry – which is designed to prevent these becoming a barrier to housing delivery.

The work on the regulatory baseline is being conducted in time for the 2010 Budget with the aim that all new regulatory proposals should be considered and, as necessary revised, in the light of its assessment of the position.

HBF
January 2010