HOME BUILDERS FEDERATION

SuDS STANDARDS ADVISORY NOTE – May 2015

1. OVERVIEW

Since the first surface water drainage-related public consultation in early 2008 (issued immediately after the Pitt Report) HBF has been working with Defra and other partner/stakeholder interests on new design and construction standards to deal more effectively with the control and management of surface water run-off.

Until late last year, the proposal was for 152 newly established SuDS Approving Bodies (SABs) to approve and subsequently adopt SuDS infrastructure, with no direct link to planning. This policy was eventually abandoned for one that should work well for HBF members. Whilst somewhat hard to measure, the role that HBF has played in bringing about this change should not be under-estimated.

Within the last year or so, DCLG also joined the partner/stakeholder 'working group' - this in turn culminated in a significant joint consultation on SuDS closing in October 2014. Arising from this consultation, on the 18th December 2014 the Secretary of State (Eric Pickles) made an important announcement, i.e. flood risk and flood risk mitigation would continue to be dealt with through the planning process. Furthermore, the range of options for dealing with surface water run-off would continue to include what has since become known as above ground 'SuDS' infrastructure. Subsequently, on the 23rd March DCLG issued two important supporting documents, namely:-

- Further Planning Practice Guidance – "Reducing the Cause & Impacts of Flooding" – see link below.

  http://planningguidance.planningportal.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/

- Sustainable Drainage Systems: Non-statutory Technical Standards for Sustainable Drainage Systems. (This short document sets down the fourteen National Standards and in general terms how they are to be met – see link below).

  https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415773/sustainable-drainage-technical-standards.pdf

In many respects this latest refinement to established planning practice guidance represents a logical extension to the NPPF and the accompanying (overarching) Planning Practice Guidance that deals exclusively with development and flood risk. Importantly, the planned changes in planning guidance that came into force on 6th April, will not only reinforce this approach but it will also set out a range of options that will attempt to provide certainty and consistency when it comes to the maintenance of SuDS/surface water infrastructure. Moreover, the updated process and procedures should have few if indeed any adverse repercussions for HBF members, providing that they in turn follow a structured approach to flood risk assessment together with the design and construction of surface water drainage infrastructure.

It is becoming more widely accepted that 'SuDS' has never been authoritatively defined, similarly that 'SuDS' can also embrace underground (piped) solutions. Indeed, there are occasions when the latter remains the only viable option.

What is important is that site characteristics and constraints are:-

i. Fully considered and/or understood from the outset.

ii. Effectively articulated to local planning authorities in any pre-application discussions through the vehicle of well-considered technical evaluation(s).

This approach will need to continue through the formal planning process. Moreover, robust viability evidence, capable of demonstrating the surface water drainage strategy that is being proposed effectively deals with flood risk, whilst meeting the National SuDS Standards, without compromising project viability, will be of intrinsic importance. In many respects, surface water drainage considerations and the future maintenance of such infrastructure will need to be elevated in importance at the land acquisition due diligence stage. If not, then delays and the potential for additional costs may well be the likely outcome.

2. TRANSITIONAL ARRANGEMENTS

On this occasion there are no transitional arrangements - the latest planning legislation is nothing more than a refinement of what is already taking place. However, there are important procedural requirements that cannot be ignored – these are covered later in this guidance note.

3. FLOOD RISK & THE PLANNING FRAMEWORK

One of the reasons why there are no transitional arrangements is due to the fact that flood risk and the mitigation thereof has been a material planning consideration ever since the introduction of *DoE Planning Circular 30/92 (Development & Flood Risk) -1992*. More recently, the NPPF, supported by dedicated planning practice guidance specific to flood risk, has continued to provide the overarching planning framework. From 6th April 2015 this framework will still be in place but it has now been refined by the planning practice guidance referred to earlier in this note. Similarly, the non-statutory technical standards. As a result, HBF members should be mindful of the importance and necessity to follow the new processes and procedures that will underpin this latest change in terms of how we assess, manage and control surface water run-off.

4. SECTORAL STAKEHOLDERS - AGREED BEST PRACTICE GUIDANCE

To assist all partner/stakeholder interests, simple, non-statutory Best Practice Guidance is being produced and is nearing completion. This task is being undertaken by a number of 'sectoral' stakeholders, including representatives of Lead Local Flood Authorities (LLFAs), Water & Sewerage Companies (WaSCs), Local Planning Authorities (LPAs), and the HBF. Production of this guidance has been facilitated by Defra and is currently being written up by an external body.

The original intention was for the 'guidance' to accompany this HBF advisory note but due to a mismatch in timescale this has not been possible. The HBF view is that members need to be advised at the earliest opportunity, even if in the interests of consistency, minor changes to this note are required thereafter.

As for the intended 'Best Practice Guidance', it contains two key sections, namely procedural guidance and a further section providing more detailed explanation(s) as to how the technical standards can be met. Importantly, any best practice guidance that is introduced will be subject to the same continuous review criteria as the two documents referred to in section 1 of this note. (Note – the intention is for DCLG to vet and support both the best practice guidance and this HBF Advisory Note).

IMPORTANT NEW PROCEDURAL CONSIDERATIONS/REQUIREMENTS

As mentioned earlier in this note HBF members need to be aware of the following:-

- Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

- The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions. This includes the process for deciding when SuDS and/or types of SuDS infrastructure would not be appropriate.

- LPAs should have in place either a tier 1 or tier 2 (more detailed) strategic flood risk assessment. These assessments fulfil two specific purposes, namely they inform the LPA when setting down local flood risk management policy and secondly, they are to be relied upon to inform the site specific flood risk assessment (FRA).

- The revised planning practice guidance and non-statutory technical guidance dealing with SuDS came into force on 6th April 2015 – see links in section 1 of this note.

- The only government endorsed planning guidance in respect of SuDS is that issued by DCLG on 23rd March 2015 – see earlier links.

- Lead Local Flood Authorities (LLFAs) will play an increasingly important role in setting local planning policy specific to flood risk. To this end they became a statutory consultee on all planning applications on developments over 1.0 hectare or likely to take place on a site that has higher flood risk potential, i.e. those not defined as a zone 1 flood risk area, with effect from 15th April 2015. IDBs may also have a similar role.

- At the land acquisition due diligence stage and as part of the pre-application discussion it is essential for house builders to engage with the LLFA and in certain location IDBs.

- Any SuDS infrastructure provided will not necessarily be adopted by any designated/defined body. Moreover, the planning practice guidance issued by DCLG in March imposes no mandatory requirement for formal adoption. Options for future maintenance (and possible adoption) could include the LPA, WaSCs or a bona fide management company. Developers need to be aware that a number of LPAs may seek to secure the maintenance and adoption of SuDS infrastructure themselves through the use of planning conditions and/or a S106 Agreement. There is a potential risk here in that developers may be called upon to pay over a significant commuted sum. If this in turn affects the viability of a project it will not be enforceable leaving other surface water drainage options for the developer/LPA to consider. All that is required when making a planning application is for the developer to define who will be responsible for the future maintenance of all SuDS infrastructure in perpetuity. This is an important requirement as the LPA will need to be convinced that the body designated for such is sufficiently experienced to take on the maintenance role.

- From here on, project viability will be an important and material consideration at the pre-planning/planning application stage. A robust, fact-based understanding of the cost of various SuDS/surface water drainage solutions will be essential.

- How we are to deal with surface water drainage infrastructure that is to be constructed on or through third party land has still not been fully addressed. If developers are confronted with excessive third party ransom costs these are to be factored into any assessment of viability costs. If viability is compromised then an alternative solution can be considered and this may well include a piped drainage system, adopted under S104 with an outfall provided by the WaSC by way of a S98 requisition. *(Note: DCLG has been asked to confirm that this will be the case and a response is awaited. Whatever the response may be an addendum to this note will be issued).*

- In terms of planning conditions imposed/included at the request of the Environment Agency before 6th April 2015 it will fall to the LPA to deal with the discharge of such conditions, seeking advice from whoever they think appropriate. The same applies when it comes to reserved matters approvals before 6th April.

- When considering planning applications determined after 6th April 2015 but submitted/validated prior to this date the LPA is expected to consider planning policy in force at the time the decision is made, i.e. including the SuDS policy. In reaching that decision it is at the LPA's discretion to decide what weight they attribute to different policies and where necessary, they have the discretion to take a flexible approach.

- An application for planning permission submitted before the requirement to consult LFRAs came into force the new statutory consultation requirements will not apply even if determined after 6th April 2015. However, the LPA will still be free to consult on a non-statutory basis as the existing planning practice guidance encourages.

- Water quality remains a material consideration but there are no prescriptive standards to be imposed in terms of treatment train management. That said Environmental Quality Assessments (EQA) of any receiving water body/watercourse may still be required as an integral part of any due diligence technical appraisal. However, given that such matters can often be an integral part of the investigation and remediation of contaminated land, any such requirement should have little if indeed any adverse repercussions.

5. NEED FOR FEEDBACK

As mentioned earlier in the note the standards and guidance that support the design and construction of SuDS infrastructure will be subject to an ongoing review of their effectiveness. Similarly, any advisory notes issued by HBF. As a result, feedback on how the SuDS standards are being applied, the experiences of HBF members as part of the planning process etc., are vital. HBF therefore makes a special plea to all members to provide any such information, whether it be good, bad or indifferent.

HBF London

5th May 2015