



# RTPI 2014

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## **RTPI response to DEFRA and DCLG Consultation on Delivering Sustainable Drainage Systems**

Friday, 24 October 2014

### **About the RTPI**

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing over 23,000 spatial planners. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development. In responding to consultations we draw upon the wide experience and expertise of our Members in both the public and private sectors.

### **Response to the consultation**

The RTPI appreciates the opportunity to respond to the Department for Environment Food & Rural Affairs and (DEFRA) and the Department for Communities and Local Government (DCLG) consultation on Delivering Sustainable Drainage Systems recognising the importance of flood protection. Given the threat of floods it is critically important that Local Plans consider Strategic Flood Risk Assessment and the suitability of sustainable drainage systems in their area. The RTPI is supportive of the expectation Sustainable Drainage Systems (SuDs) be considered a material consideration during the planning application stage. Despite all drainage systems (new and old) requiring maintenance to avoid unintended consequences such as flooding, the maintenance of sustainable drainage systems (SuDs) raise particular issues as addressed in the consultation document. For example, do local planning enforcement teams have the ability to effectively enforce the maintenance of drainage systems?

The planning system is the medium preferred to accommodate the provision, management and maintenance of SuDS and in theory this is correct. In practice there is also the advantage of the matter being dealt with under one roof and the lack of additional delay which may result from a two pronged system. However, the Local Planning Authority (LPA) has a duty to investigate alleged breaches of planning control albeit it has discretion as to whether to take action or not based on the planning principles of harm, materiality and precedent.

Should the responsibility to enforce fall on the LPA, the options would be to enforce for breach of condition (Enforcement Notice) or a breach of a legal agreement (Injunctive action). Service of a Breach of Condition Notice has the advantage of no right of appeal avoiding dispute, but can still be challenged by way of Judicial review. In addition the maximum penalty of £2,500 is rather low to be a deterrent. A breach of condition enforcement notice or enforcement notice can attract a fine of up to £20,000 in the

Magistrates Court or unlimited in the Crown Court. However, this has no less than seven routes of appeal including time for compliance taking several months to breach which may require prompt remedial action.

The most important point is that the service of these notices cannot compel the required remedial action only sanction those responsible through prosecution, conviction and sanction by way of fines. Therefore for large bodies the relatively low fines are unlikely to be a disincentive and the legislation itself does not provide for remedial action to be taken merely makes such action on expiry of the relevant enforcement notice a criminal offence. It is therefore considered that the Town and Country Planning Acts do not provide appropriate sanction and power to take necessary remedial action for such an important matter, not least as the schemes to which it relates can be very significant in terms of size and impact on many people both directly and indirectly. The responsibility for maintaining and managing SuDS should fall with those with expertise and resources and supportive legislation. It is considered that for SuDS (especially the larger the scale and impact) that the Planning Acts do not offer sufficient powers of redress nor sufficient sanctions to effectively enforce breaches of relevant conditions.

**Q1. Do you agree that the proposed revision to planning policy would deliver sustainable drainage which will be maintained? If not, why?**

Careful consideration of the impact on local authority planners and developers is needed. Properly resourced planning departments are needed to ensure robust recommendations are made and so that developers are able to have applications considered appropriately. In addition, questions remain such as whether the recommended consultees will be statutory consultees, or not. Furthermore, the proposed changes may require updates to local planning policy and guidance which by their nature and legislative requirements cannot respond quickly to changes to National Planning Policy Guidance. Therefore the extent LPAs without an up-to-date local policy and guidance on SuDs in place (including conditions on management and maintenance) means that any given development could be exposed to reversal on appeal to the Planning Inspectorate (PINS).

**Q2. How should the Local Planning Authority obtain expert advice on sustainable drainage systems and their maintenance? What are the costs/benefits of different approaches?**

Local planning authorities are already experiencing resource and capacity challenges so anytime further requirements and expertise are required many authorities will have difficulty meeting the demand. There is a strong need for properly resourced planning departments. Many local authorities would hope and expect to continue receiving advice at the strategic level from bodies like the Environment Agency.

Expert advice should be obtained from relevant bodies both within and without the LPA and the bodies should be placed under an expectation of duty to provide adequate and timely advice. The Government recognises an additional burden on LPAs and the relevant public bodies, but there are not suggestions of how to resource these additional burdens, nor suggestions of how breaches of SuD requirements would be enforced and resourced.

**Q3. What are the impacts of different approaches for Local Planning Authorities to secure expert advice within the timescales set for determining planning applications?**

Currently available resources may pose a challenge for many local planning authorities.

A dedicated service for technical advice, provided either internally or contracted out by the Council, is the only approach to ensure that appropriate advice on proposals is received to inform the planning decision. The alternative would be to rely on external bodies (Environment Agency, Water Company) to provide that advice. Without a paid-for service agreement this will at best be inconsistent and is unlikely to meet assessment deadlines.

An applicant has the right of appeal for non-determination within the statutory timescale for major schemes usually dealt with by hearing or local public inquiry. Such appeal routes are resource intensive and divert human resources from other aspects of LPA planning work. Delayed advice therefore can have significant implications where such advice is a requirement for making a considered and proper decision in relation to SuDS.

**Q4. Do you agree that minor size developments be exempt from the proposed revision to the planning policy and guidance? Do you think thresholds should be higher?**

The proposed threshold (for major size developments) is appropriate, but should be left up to local planning authorities whether to go further and extend the policy to minor size developments.

If LPAs are given discretion to lower threshold, then private householders may be the best placed to maintain small scale SuDS. Part one of the General Permitted Development Order (GPDO) provides for an informal SuDS route encouraging hard standing above a certain size to be made of porous material for single dwelling houses. An accumulation of minor development can have a significant impact on surface run off not least where historical development has been poor in this regards. However, the practicality of effectively enforcing SuDS regimes for smaller developments not least in terms of resources and the degree of historical precedent in a given area is somewhat limited.

**Q5. What other maintenance options could be viable? Do you have examples of their use?**

The options set out cover most practical maintenance options. Long-term maintenance is critical to avoid serious potential consequences such as danger to lives and loss of property, though some amount of flexibility is likely the best the approach. When possible it is appropriate to offer a suite of viable maintenance options. If there is not a viable option, no condition should be imposed.

**Q6. What evidence do you have of expected maintenance costs?**

We do not have access to costs information.

**Q7. Do you expect the approach proposed to avoid increases in maintenance costs for households and developers? Would additional measures be justified to meet this aim or improve transparency of costs for households?**

Evidence suggests sustainable drainage systems are generally less expensive than more conventional methods, but we cannot say if it will increase or decrease maintenance costs for households or businesses.

**For more information please contact:**

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