

SUDS - more of a drama than a soap opera?

The cast:

The Act - The Flood and Water Management Act 2010

DEFRA – the Department for the Environment Food and Rural Affairs

SAB – the SuDS Approving Body

SuDS – Sustainable Drainage Systems

WaSC – Water and Sewerage Companies

The story so far:

The government has been becoming increasingly concerned with the management of surface water, including water quality and its impact on the local environment, together with the risk of flooding to homes and businesses as a result of heavy rainfall. To address these issues, as well as the question of who will ensure drainage systems are properly maintained in the future, the Flood and Water Management Act received royal assent on 8th April 2010.

The Act amends Section 106 of the Water Industry Act 1991. Section 42 of the Act provides that the automatic right to connect surface water drainage to the public network will cease. Connection will be dependent on the drainage system being approved by SAB as meeting the National Standards, with SAB becoming a statutory consultee. The National Standards will cover the design, construction, operation and maintenance of SuDS.

DEFRA are in the process of preparing draft SuDS National Standards. It is hoped that the standards will be in place for the common commencement date under the Act of October 2011. The aim is to provide a framework to guide decision-making but with sufficient flexibility to take account of site-specific circumstances.

Where both planning permission and SuDS approval are required the applications will be dealt with together to reduce the burden on the applicant. The planning authority will notify the developer of the outcome of both the planning application and the SuDS approval. The timescale in which SuDS must be approved by SAB will be set out in regulations which are not yet available. SAB will be able to require a non-performance bond to

be paid to a maximum of the cost of construction of the drainage system. The bond will be repayable on completion of the works.

The relevant Local Authority will be responsible for adopting and maintaining SuDS, other than where SuDS are within adopted roads, where the Highway Authority will be responsible.

These provisions will apply only to surface water drainage. The right to connect newly built foul sewers to the public network remains; but an adoption agreement must be in place with the relevant WaSC before connection.

The next episode:

Will the National Standards increase costs for developers? Will the approval of SuDS being linked to the planning process cause further delays in an often already creaking system? Will delays in processing legal agreements cause difficulties in having sewers connected at the appropriate stage of development? More detail will be available when the National Standards have been drafted and the regulations governing SABs are in place. As with all good dramas, until then, watch this space!



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Age restrictions in planning for retirement housing

Local authorities are starting to recognise the need to address the issues of accommodation for older people, and reflect this in their planning policy. When an application is made for retirement housing special consideration may be given to the development because it reflects priority housing need in the area. Due to the special consideration often given, local authorities are keen to ensure that once a development is complete, it remains as housing for older people. Local authorities have two methods of securing the use of a development once permission has been granted. The first is to require a s106 obligation, and the second a specific planning condition. Both the 106 obligation and planning condition usually contain wording which imposes an age restriction on the use of permitted retirement housing.

If the issue of an age restriction for retirement housing arises in the course of a planning application, we would advise that this is secured by way of a planning condition, rather than s106 obligation. A planning condition provides more flexibility if there is the need to vary or remove the condition at some point in the future. A s106 obligation cannot be varied or removed until 5 years have elapsed from the date of the agreement, unless it is with the consent of the local authority.

If a local authority refuse to approve the variation or removal of a planning condition containing an age restriction, there is always the option of an appeal. In a recent case dated 8 October 2010, a planning inspector upheld an appeal in respect of the refusal by Isle of Anglesey County Council to grant permission for development of 15 retirement apartments without complying with an age restriction condition imposed on a previous reserved matters approval.

In terms of drafting the preferred planning condition, it is advisable to ensure the wording relates to a specific age rather than retired status. This will provide a level of certainty as any reference to the state pensionable age is open to change. The condition should also allow for a person to live with the retired occupier free from the age restriction, and remain in the property if the occupier dies.

We suggest the following model wording is used as a planning condition.

Each unit of the residential home hereby permitted shall be occupied only by:

- i) persons of not less than 55 years of age; [or state pensionable age if this is considered appropriate – although try for lower limit in first instance];
- ii) persons living as part of a single household with such a person or persons;
- iii) persons who were living as part of a single household with such a person or persons who have since died.

If the local authority does insist on containing the restriction in a s106 agreement, then it is advisable to secure a degree of flexibility by including the following wording in addition to that above.

- iv) such other persons as agreed in writing with the Council.



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