

Mr Andrew Cook
Chair
Essex Planning Officers' Association
Essex County Council
County Hall,
Market Road,
Chelmsford, Essex,
CM1 1QH



EPOA
Essex Planning
Officers Association

29th January 2015

Planning Application Process Team
Department for Communities and Local Government
Third Floor
Fry Building
2 Marsham Street
SW1P 4DF

Dear Sir/Madam,

Further changes to statutory consultee arrangements for the planning application process- Essex Planning Officers Association consultation response

This response has been produced in co-ordination with the Essex Planning Officers' Association members, made up of:

- Essex County Council
- Basildon District Council
- Braintree District Council
- Brentwood Borough Council
- Castle Point Borough Council
- Chelmsford Borough Council
- Colchester Borough Council
- Epping Forest District Council
- Harlow District Council
- Maldon District Council
- Rochford District Council
- Tendring District Council
- Uttlesford District Council
- Southend on Sea Unitary Authority
- Thurrock Unitary Authority

Essex County Council is involved under its capacity as a Lead Local Flood Authority (**LLFA**) and Local Planning Authority (**LPA**). The following has received a general consensus amongst group members.

Central Government must consider additional future funding allocation to LLFAs to undertake the additional statutory role under this proposal. As the LLFA we are concerned that the Government's new approach to delivering SuDS will remove the separate charging regime that formed part of the principles in Schedule 3 and thus the financial support to local authorities to operate a SuDS service.

We have provided a response to each of the consultation questions below.

Q.1- Do you agree with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications in relation to surface water drainage, subject to appropriate funding being available?

As mentioned in our response to the previous consultation, we do not believe that the proposal to strengthen the planning system to require SuDS will deliver sustainable drainage which will be maintainable. The proposal contained in Schedule 3 to establish SuDS Approving Bodies was preferable. If the proposal to strengthen the NPPF is the preferred option by Government then we support the proposal to make LLFAs statutory consultees for surface water. However, we are concerned that without further provisions the current proposals will not ensure SuDS are appropriately inspected during construction or maintained in perpetuity.

The concept of inspections taking place through building regulations, as mentioned in the summary of responses to the consultation on delivering sustainable drainage systems, needs to be developed. This is to ensure that qualified people inspect the construction works and ensure that what is approved is adhered to during construction. There may be an issue of whether the proposals, having gained planning permission, would then need Building Regulations approval, which may not be granted.

The maintenance arrangements are such that a multitude of people will maintain different elements of the system i.e. highway authorities adopt highway drainage, water companies adopt sewers catering for up to a 1 in 30 year event and another company/organisation adopts features catering for events above a 1 in 30 year event. This means the design of the system is fragmented and may be duplicated. With the proposed maintenance arrangements in this consultation, a system that uses purely SuDS is difficult to implement due to different design standards of the maintaining authorities. Long term monitoring of maintenance is difficult and complicated compared to if a single authority had a duty to adopt the entire system and, as highlighted by the Pitt Review, the key barrier to implementation of SuDS is the lack of clarity for responsibility for maintenance.

In addition, we sent a query to the Defra SuDS mailbox. They confirmed that SuDS would be governed by ordinary watercourse regulation powers held by LLFAs. Yet the consultation suggests that maintenance should be enforced through the planning process. This will lead to confusion and, quite likely, the LLFA and LPA looking to each other to enforce. It will be the LLFA who has the interest in ensuring that flooding is prevented and who will ultimately need to take action should things go wrong. Planning law also allows changes to be deemed to be approved if they have been in place for a certain period of time. Therefore with some development cases a lack of maintenance, which causes a

fundamental change to the feature, would not be enforceable through planning enforcement.

Q.2 If Lead Local Flood Authorities were to be made a statutory consultee on development in relation to surface water drainage, do you agree that this should be limited to major development?

No, we disagree. Many Local Planning Authorities have planning policy requiring SuDS even on minor development. The Environment Agency's current flood risk standing advice for development less than 1ha in Flood Zone 1 also recommends the use of SuDS. Therefore LPAs will still need access to expert advice even for minor planning applications. However we consider the requirement for this should be phased in to allow LLFAs time to build capacity and resource.

As mentioned in our previous consultation response, the cumulative impact of minor developments can be significant. Since many of our Surface Water Management Plans are in urban areas, planning applications in these areas are expected to be largely minor. It would be logical for the LLFA to provide comments on these also.

Q.3 Do you think that there is a case for Lead Local Flood Authorities to be a statutory consultee on the following issues? If so, do you think this consultation requirement should apply to developments of a certain size, and/or in certain risk locations?

a) development with groundwater management implications?

Yes, there is a case for LLFAs to be a statutory consultee on this to correspond with the LLFA's responsibilities, subject to appropriate funding being available.

b) development in proximity to ordinary watercourses?

Yes, there is a case for LLFAs to be a statutory consultee for development in proximity to watercourses to reflect the Environment Agency's (EAs) current consultee role within a certain distance of main rivers, subject to appropriate funding being available. If the EA are moving away from providing comments this would leave a vacuum with no body providing the necessary technical advice.

However, consent for works to ordinary watercourses is required under a separate regulatory regime. It may not be appropriate to comment on this through the planning process. We could put local arrangements in place whereby we issue standing advice. The benefit of being consulted on the proposals would be to make us aware of potential works being undertaken to watercourses.

c) any other local flood risk issues?

As mentioned in paragraph 33, it would be helpful if LLFAs were also statutory consultees on Local Plans in relation to surface water. At present the LLFAs role in relation to Local Plan production is unclear.

Q.4 Do you agree with the proposed changes as set out in Table 1:

a) to remove paragraph q(ii)?

Paragraph 25 states that 'it is considered that the provision of advice would best be established through local arrangements'. This appears to address question 3.b above that LLFAs should be made statutory consultees to development in proximity to ordinary watercourses, and local arrangements can be made i.e. the LLFA may put in place standing advice.

c) to remove paragraph s?

No, we disagree. This would only allow LPAs to consult the EA on EIA applications or major developments in Flood Zones 2 & 3 and is proposed as the EA has wider responsibility for permitting landfill and incinerator sites. The Government's online guidance planning for all waste management facilities states that *'before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body.'* Whilst the guidance encourages environmental permits to be submitted at the same time this is not required and in reality hardly ever happens.

The proposed change to legislation emerges out of consideration of water related issues. However, this change will affect the advice local authorities currently receive from the Environment Agency on land stability, air emissions, odours, vermin and birds and litter. There has not been any consideration of the impact of withdrawing such advice.

f) to remove paragraph y?

No, we disagree. The justification for removing this paragraph is that local authorities have all of the relevant information on sites used for the deposit of waste or refuse. However, new sites are continually being developed. Not all sites require an environmental permit; exemptions for sites which can include landfill sites, are issued regularly by the Environment Agency. These are not always known to the local authority, even if they need planning permission. National Planning Policy for Waste (Appendix B) states that *'Likely proposed development in the vicinity of the location under consideration should be taken into account in considering site suitability and the envisaged waste management facility.'* Online planning guidance states that *'Before granting planning permission, the local planning authority will need to be satisfied that the impacts of non-waste development on existing waste management facilities are acceptable and do not prejudice the implementation of the Waste Hierarchy.'*

As the Environment Agency will have issued an environmental permit controlling current operational sites, they are currently able to provide advice on any potential conflict with adjacent land uses. This will not be the case if this paragraph is removed.

Questions arising from the consultation

We have a number of questions remaining from the previous consultation and arising from this consultation as follows:

- What is the extent of the role of the statutory consultee for surface water - will there be guidelines for what is in-scope and out of scope for the LLFA?
- Who will be responsible for determining whether asking for SuDS would make development unviable? Do planners have the knowledge to make this decision or should this fall to the LLFA?
- Who will be the statutory consultee for water quality? Paragraph 29 suggests that water quality will be the responsibility of the EA. The SuDS National Standards contained the criteria for addressing water quality so the LLFA would also look to comment on this.
- We seek confirmation of the scope and scale of the new burdens for LLFAs and LPAs and how this is to be funded?

We look forward to viewing the summary of consultation responses and hope that these additional questions can also be addressed.

Yours sincerely,

A black rectangular redaction box covers the signature area. A thin, light-colored scribble is visible above the box, extending from the 'Yours sincerely,' text.

Andrew Cook
Chair, Essex Planning Officers' Association