



Derby City Council

COUNCIL CABINET
9 December 2015

Report of the Cabinet Member for Cohesion
and Integration

ITEM 11

Adoption of Sustainable Drainage Systems

SUMMARY

- 1.1 To comply with the National Planning Policy Framework and the associated Planning Practice Guidance, the Planning Authority requires developers to give priority to Sustainable Drainage Systems (SuDS) in flood risk areas and on major development sites.
- 1.2 This report seeks approval in principle for the Council to adopt SuDS both within the City and for SuDS outside of the City that may impact on drainage and flooding in the City. This is subject to securing sufficient funding for future maintenance of the SuDS from the owner or developer concerned.
- 1.3 The reason for this approach is to give the Council greater control and security over the maintenance of these assets thereby reducing the risk of flooding within the City.
- 1.4 The report provides details of a current SuDS proposal at the Hackwood Farm development in Mickleover which the Council is proposing to adopt.

RECOMMENDATION

- 2.1 To approve in principle:
 - 2.1.1 The adoption by the Council of Sustainable Drainage Systems (SuDS), including SuDS situated outside of the City boundary where those assets may have an impact on the drainage and flooding within the City.
 - 2.1.2 Where appropriate, the use of powers under Section 106 of the Town and Country Planning Act to secure commuted sum payments to finance the future maintenance of the SuDS system.
 - 2.1.3 Where appropriate, the use of powers under Sections 38 and 278 of the Highways Act 1980 to secure commuted sum payments to finance the future maintenance of SuDS systems that relate to highway drainage.

- 2.2 To delegate the decision and functions in 2.1.1, 2.1.2 and 2.1.3 to the Head of Service for Highways, Engineering, Grounds Maintenance and Street Cleansing.
- 2.3 To approve in principle the adoption of the SuDS System at Hackwood Farm, Mickleover subject to the Head of Service for Highways, Engineering, Grounds Maintenance and Street Cleansing being satisfied that the SuDS are suitable and acceptable for adoption and that the commuted sum payment secured for its maintenance is adequate.

REASONS FOR RECOMMENDATION

- 3.1 The “Sustainable drainage systems – House of Commons Written Statement” (HCWS161 18 December 2014) sets out the Government’s intentions on the provision of SuDS on new developments and directs local planning authorities to, “consult the relevant lead local flood authority on the management of surface water; satisfy themselves that the proposed minimum standards of operation are appropriate and ensure through the use of planning conditions or planning obligations that there are clear arrangements in place for on-going maintenance over the lifetime of the development. The sustainable drainage system should be designed to ensure that the maintenance and operation requirements are economically proportionate.”
- 3.2 Whilst developers can retain the future ownership and maintenance of SuDS themselves or arrange for others such as a management company to take on that responsibility, there can be problems arising should those companies cease to exist. The adoption of SuDS by the Council subject to securing sufficient sums for future maintenance removes this risk.
- 3.3 The adoption of sustainable drainage systems by the council will therefore assist the planning authority in fulfilling its obligation to ensure that the sustainable drainage systems can be provided and adequately maintained for the lifetime of the development and help deliver the Core Principles CP2 and CP19 outlined in the Derby City Local Plan Core Strategy.
- 3.4 Under the Flood Risk Regulations the City Council became a Lead Local Flood Authority (LLFA). The Floods and Water Management Act 2010 placed duties on the LLFAs as follows:
- to prepare and maintain a strategy for local flood risk management in their areas, coordinating views and activity with other local bodies and communities through public consultation and scrutiny, and delivery planning,
 - to maintain a register of assets – these are physical features that have a significant effect on flooding in their area,
 - to investigate significant local flooding incidents and publish the results of such investigations.

The adoption of SuDS will help in fulfilling these duties. Failure of SuDS features through lack of maintenance will impose a burden on the Council in terms of the

requirement to investigate any resultant flooding and also would compromise the duty to implement a flood risk management strategy. Adoption by the Council will enable this situation to be managed and financed, whereas adoption by private management companies could lead to a high administrative burden on the Council with no financial compensation.



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Report of the Acting Strategic Director of
Communities and Place

SUPPORTING INFORMATION

- 4.1 Sustainable urban drainage systems (SuDS) are a natural approach to managing drainage in and around properties and other developments. SUDS work by slowing and holding back the water that runs off from a site, allowing natural processes to break down pollutants.
- 4.2 Similarly SUDS work to hold back and reduce pollution in surface water draining from the highway.
- 4.3 The proposed Hackwood Farm development in Mickleover has a sustainable drainage system that includes 3 ponds and a flood attenuation area. The flood attenuation area has been provided by the developer following extensive negotiation and will substantially reduce the flood risk for the north of Mickleover which suffered flooding in 2012. The developer has asked if Derby City Council will adopt the ponds and flood attenuation area. The Projects Water and Flood Risk Management Team has calculated a commuted sum that will cover the maintenance cost for a minimum of 60 years. The commuted sum has been calculated as £370,000 to include a contingency for rate change risk.
- 4.4 The developer is also developing an adjacent site in South Derbyshire with a sustainable drainage system that has 1 pond and 700 metres of swales. A commuted sum has been calculated by South Derbyshire of £230,000 to include a contingency for rate change. The developer has now asked if Derby City Council would be prepared to take over the maintenance of the SuDS system.
- 4.5 The developer will deliver a development that offers North Mickleover a high degree of flood risk reduction. The SuDS form a vital part of the flood risk management strategy for the area and the SuDS on both developments form an integrated system. It is important that both systems are fully managed to ensure that flood protection is offered into the future for Mickleover.
- 4.6 Adopting both drainage systems will offer efficiency saving through economies of scale and reduced travelling requirement. Derby already maintains other SuDS systems within public open space in Mickleover which will lead to further efficiency savings.
- 4.7 It is therefore proposed that Derby City Council accepts maintenance of both SuDS systems for a total commuted sum of £600,000.

OTHER OPTIONS CONSIDERED

5.1 Adoption by private maintenance companies.

This option although it has been employed on some developments in Derby, is not considered the best option. The main issue is that the maintenance is dependent on a maintenance company which could go out of business or may not fully carry out its responsibilities. These systems are often designed to offer benefits to properties downstream. Lack of maintenance of the systems could reduce the amount of attenuation the systems are design to accept, although having little impact locally it could cause an increase in flooding downstream. Under the Floods and Water Management Act the City Council is responsible for managing surface water flood risk within its area. This effectively places a burden on the Council to inspect the systems to ensure maintenance is taking place. Members of the public are also likely to contact the council if maintenance is not being carried out but we would have limited powers to undertake enforcement. The administration of managing these private drainage systems would therefore place a financial burden on the council.

The highway authority will not allow direct connection of their drainage assets to a privately managed SuDS system.

5.2 Adoption by Water Companies.

This is viewed as another viable alternative and may be the best option for the future. Water Companies have expressed an interest in adopting the systems; however there are strict legal definitions of what the companies are allowed to adopt which currently makes adoption difficult. It is believed that these issues are being addressed by the industry, however until these issues are resolved Severn Trent Water will not adopt SuDS features. It is believed that it may be some time before water companies are in a position to adopt. Therefore this option is ruled out.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Others	Tim Clegg David Bartram
For more information contact: Background papers: List of appendices:	Kevin Tozer 01332 641792 kevin.tozer@derby.gov.uk None Appendix 1 – Implications

IMPLICATIONS

Financial and Value for Money

- 1.1 It is proposed that financing for the adoption of any SuDS features in terms of new developments will normally be secured through a commuted sum under an agreement made pursuant to Section 106 Town and Country Planning Act 1990, although some funding for highway drainage will be secured by agreements under section 38 or 278 Highways Act 1980.
- 1.2 The challenge is how these commuted sums can be made available to support on-going maintenance in the current climate of conflicting demands on resources. One suggested would be done by increasing the Projects Water and Flood Risk Management (PWFRM) revenue budget. The availability of the commuted sums should be considered thoroughly before this report is approved.

- Value for money: The team already has staff employed to manage surface water flood risk resulting from council assets, for example highway culverts. These sums of money will help finance the team into the future and provide economies of scale.
- 1.3

Legal

- 2.1 Adoption of the SuDS involves the transfer of ownership of the land and assets to the Council. Once transferred the Council will take on responsibility for maintenance of the land and the assets.

Personnel

- 3.1 It is currently envisaged that the maintenance liabilities will be met within the existing staff structure. However as more SuDS systems are adopted this may need to be reviewed.

IT

- 4.1 It is envisaged that the current IT system (InfoNet) used by PWFRM to manage Land Drainage and Flood Defence assets will be used to manage any adopted SuDS system. Therefore there will be little impact on IT systems.

Equalities Impact

- 5.1 None

Health and Safety

- 6.1 The adoption of open water features will place a duty on the Council to ensure that these features are safe for all people.
- 6.2 It is a requirement under the Construction Design and Management (CDM) Regulations for the Principal Designer to identify, eliminate or control foreseeable risk for anyone affected by the works. Adoption will not take place until the features are considered safe to operate.

Environmental Sustainability

- 7.1 Encouraging the wider use of SuDS will help fulfil Derby City Council's responsibility to assist the Environment Agency in delivering the requirements of the Water Framework Directive (WFD) that all surface and groundwater bodies reach good ecological status or good ecological potential.
- 7.2 One of the key methods of complying with the Water Framework Directive is to reduce the amount of pollution entering the water environment. Highway drainage is now recognised as a major source of these pollutants. SuDS are recognised as a good method of treating highway runoff and by adopting SuDS Derby would be demonstrating its commitment to complying with the WFD by ensuring new highway runoff is treated before it enters a water body.

Property and Asset Management

- 8.1 The legal title of the land where the SuDS are constructed will need to pass to the Council. Asset maintenance will be managed by the PWFRM Team using commuted sums.

Risk Management

- 9.1 The Council could be liable if flooding occurs due to lack of maintenance. The PWFRM team have staff employed currently to manage other assets where this is a major risk and are therefore well versed in managing the risk.
- 9.2 If private management companies are used to adopt SuDS then risk will increase as control of a flood defence asset will be in private hands and it will be difficult to manage the asset in order to ensure that flooding does not occur.
- 9.3 Health and Safety is a risk but this is covered above.
- 9.4 Local Authorities have a general responsibility not to compromise the Government in achieving compliance with the Water Framework Directive. Non-compliance could lead to the European Commission levying fines against the UK. Under the Localism Act 2011 the Government can require public authorities to make payments in respect of EU financial sanction for infraction of EU law. Allowing untreated highway runoff from entering watercourses could be seen as such an infraction.

Corporate objectives and priorities for change

- 10.1 To help deliver a safe strong and ambitious City and to make Derby a safe and pleasant environment to live in. The proposal to reduce flood risk and providing environmental habitat areas will help deliver these targets.