

From: Matthew Balfour, Cabinet Member for Environment & Transport

Barbara Cooper, Corporate Director for Growth, Environment and Transport

To: Environment and Transport Cabinet Committee – 16 September

Subject: Drainage and Planning Policy Statement

Past Pathway: None

Future Pathway: N/A

Classification: Unrestricted

Electoral Division: County Wide

Summary:

Kent County Council (KCC) has been made a new statutory consultee for surface water in major planning applications. As such, KCC has prepared a draft policy statement setting out the requirements for drainage in new major developments for developers and planners and detailing how KCC will assess drainage prior to providing a response to the planning authority.

Recommendations:

The Environment & Transport Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Environment & Transport on the proposed decision to adopt the Drainage and Planning Policy as attached at Appendix A

1. Introduction

- 1.1. In April 2015, Kent County Council (KCC), as Lead Local Flood Authority (LLFA) for Kent, became a statutory consultee for surface water in major planning applications.
- 1.2. Under Article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ('the Development Management Procedure Order'), KCC is now required to provide a consultation response on the surface water drainage provisions associated with major development within 21 days of receiving a request for consultation from a planning authority.
- 1.3. Alongside this, changes to the National Planning Policy Guidance (NPPG) promote the use of sustainable drainage systems. NPPG states:
...when considering major development, as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015, sustainable drainage systems should be provided unless demonstrated to be inappropriate.
- 1.4. Sustainable drainage systems (SuDS) are designed to control surface water as close to its source as possible. They should also aim to closely mimic the natural, pre-development drainage across a site, wherever possible. Well-designed sustainable drainage systems also provide opportunities to:

- reduce the causes and impacts of flooding,
 - remove pollutants from urban run-off at source, and
 - combine water management with green space with benefits for amenity, recreation and wildlife.
- 1.5. In order to meet the new requirement of NPPG developers will have to prepare a drainage strategy or flood risk assessment that sets out how the proposed development will manage drainage. The Drainage and Planning Policy document in Appendix B of this report is KCC's policy on drainage and explains what we will look for when we review drainage strategies prior to providing a consultation response to the planning authority.

2. Background

- 2.1. The Flood and Water Management Act 2010, which made KCC a Lead Local Flood Authority, also included Schedule 3 which set out proposals to make upper tier authorities, including KCC, a drainage approving body.
- 2.2. The role of the drainage approval body would have been to approve the technical design of drainage in new developments according to government guidance (which prioritised SuDS), to inspect the construction of the approved drainage and, where the new drainage served two properties or more, to adopt the drainage and maintain it.
- 2.3. This role was never implemented. Defra was unable to resolve some of the issues that were required for full implementation to the satisfaction of all stakeholders, in particular how the long-term maintenance would be funded. There were also concerns about how this detailed assessment would have worked alongside the planning system, where most major planning applications are submitted as outline and the detail is provided at a later stage.
- 2.4. In September 2014 Defra consulted on a different approach to SuDS in new development. It proposed changes to the planning system to incorporate SuDS, which include the use of planning conditions to implement long-term maintenance of SuDS, with planning authorities responsible for enforcing.
- 2.5. With the outcome of this consultation supporting the use of the planning system, the responsibility for delivering this new proposal transferred from Defra to the Department of Communities and Local Government (DCLG).
- 2.6. DCLG released a further consultation on the role of the LLFA in planning. This consultation was supported and DCLG amended the Town and Country Planning (Development Management Procedure) (England) Order 2015 to include LLFAs as a statutory consultee for major developments with surface water.
- 2.7. The current role KCC has will ensure that drainage is properly designed at the planning stage. Our role will not guarantee that sustainable drainage is delivered or maintained. Defra has chosen not to continue to deliver Schedule 3 and there are currently no plans to address the issue of SuDS maintenance.

3. Drainage guidance

- 3.1. In preparing for the drainage approval bodies, Defra prepared technical guidance that would have set the minimum standards that drainage should meet to receive approval under Schedule 3. Though Schedule 3 will not be implemented, Defra has issued these as a standard for sustainable drainage in

planning. The non-statutory technical standards for sustainable drainage systems sit alongside the NPPG and together provide minimum standards for drainage in new development. The non-statutory technical standards for sustainable drainage systems can be found in Appendix C.

- 3.2. KCC has prepared the Drainage and Local Flood Risk Policy to set out what developers should consider in developing a drainage strategy for their development and what KCC will look for in assessing the proposed drainage strategy before providing a consultation response to the planning authority.
- 3.3. The Drainage and Local Flood Risk Policy builds on the minimum technical standards in the non-statutory technical standards for sustainable drainage systems using industry best practice and guidance for drainage and SuDS. The policy sets out how a development should seek to prioritise SuDS and provide drainage appropriate to the site, locations, geology and local drainage infrastructure. It also promotes the incorporation of wider benefits that SuDS can offer.

4. Consultation

- 4.1. The Drainage and Local Flood Risk Policy was published for public consultation for six weeks between 12 June 2015 and 29 July 2015. We received responses from 45 interested parties and stakeholders. Significant interest was shown by local parish councils and district councils. A summary of the consultation responses we received and our comments can be found in Appendix D.
- 4.2. The majority of the comments received indicate that the document clearly defined Kent County Council's new role for surface water management within the planning application process. There were also some comments that identified minor changes regarding the document layout, ditches on development sites and adoption policy. These comments have been incorporated into the draft document attached to this paper.

5. Financial Implications

- 5.1. As a statutory consultee, KCC has to provide a response to the planning authority on the drainage proposals in major planning applications. In order to achieve effective, sustainable drainage we also provide pre-planning advice, so that developers are aware of the requirements and the new guidance.
- 5.2. Analysis of past planning applications in Kent indicates that recently there have been in excess of 500 major planning applications a year. This is expected to increase as the economy continues to improve and the new housing requirements are delivered. KCC estimates that this will require approximately 2 full-time equivalent members of staff to fulfil the minimum requirements of consultation responses and pre-planning advice.
- 5.3. Defra has provided funding for this role. In 2015/16 KCC has been allocated £81,640. This is to cover initial set-up costs. The funding for subsequent years has not been set out in detail, but it will be approximately £13,000 per LLFA per annum. This figure is significantly below our estimate of the cost of this new role. The LGA and KCC, amongst others, have lobbied the government over this, but they have not indicated that they reconsider this allocation.
- 5.4. The statutory consultee role is an important function for KCC to ensure that development does not increase flood risk. Kent is the most at risk local authority for surface water flooding and one of the most at risk for river and coastal

flooding. As the LLFA and Highway Authority for the area KCC will be responsible for investigating flooding that results from poorly planned drainage, therefore this new role is a vital function.

- 5.5. Consequently, in subsequent years the funding for the statutory consultee role will be supplemented from the flood risk management budget, which is supported by a separate grant from Defra that KCC receives for its role as LLFA. This financial year the LLFA grant to KCC was £586k.

6. Legal Implications

- 6.1. An adopted policy for drainage will allow KCC to provide comments on drainage proposals to the planning authority that go beyond the requirements set out in the non-statutory technical standards and the NPPG. If the drainage strategy for proposed development does not meet the policy requirements, KCC has grounds to object to the planning application. The planning authority will determine whether to uphold any objection.
- 6.2. If KCC objects to a development on surface water drainage grounds we may be required to attend a public inquiry to defend our objection. KCC already offers planning advice to planning authorities and attends public inquiries as part of that service. The potential for attendance at public inquiries has been built into the business model for this new function.
- 6.3. Generally, drainage issues can be resolved prior to a public inquiry, so there is a low likelihood that public inquiries will be required. However, resolving any drainage issues will require consultation with KCC, which has also been included in the business model.

7. Conclusions

- 7.1. KCC has been made a new statutory consultee for surface water in major planning applications.
- 7.2. KCC has prepared a policy statement to set out the requirements for drainage in new major developments for developers and planners.

Recommendations:

The Environment & Transport Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Environment & Transport on the proposed decision to adopt the Drainage and Planning Policy as attached at Appendix A

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