Sustainable Drainage (SuDS) Appeals

Version no	**1.2**
Date of last update/review	**September 2025**
Responsibility of	**Subject Lead for Flooding, drainage, water, SuDS**
Update to the 2019 SUDS Chapter.	

Key legislation and policy

Legislation	• Flood and Water Management Act 2010 (Schedule 3) • The Sustainable Drainage (Appeals) (Wales) Regulations 2018 • The Sustainable Drainage (Approval and Adoption Procedure) Regulations 2018 • The Sustainable Drainage (Enforcement) (Wales) Order • The Sustainable Drainage (Application for Approval Fees) Regulations 2018 • The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018 • The Sustainable Drainage (Approval and Adoption) (Wales) (Amendment) Order 2020
National policy and guidance	• Statutory standards for sustainable drainage systems • Sustainable Drainage (SuDS) Statutory Guidance • Frequently Asked Questions • Technical Advice Note 15: Development, flooding and coastal erosion
Judgments	•
Other guidance	• Ciria (C753F): The SuDS Manual • Susdrain

Introduction

1. Schedule 3 to the Flood and Water Management Act 2010 makes the provision of Sustainable Drainage Systems (SuDS) a mandatory requirement for all new developments. SuDS aim to manage rainfall in a way similar to natural processes, making use of the landscape and natural vegetation to control the flow and volume of surface water. SuDS can deliver multiple benefits including:

- flood risk reduction,
- improved water quality,
- opportunities for habitat creation,
- enhanced biodiversity,
- supporting well-being through bringing people closer to green and blue community spaces.

2. From 7 January 2019, the majority of new developments will require SuDS approval. From this date SuDS on new developments must be designed and built in accordance with the Statutory SuDS Standards published by the Welsh Ministers. SuDS Schemes must be approved by the local authority acting in its SuDS Approval Body role (SAB) before construction work begins.

3. The exception to this requirement is laid out in Article 6 of The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018. There has been some confusion caused by the wording of this exception, with some literature referring to a 'single dwelling' exception. However, the exact wording of the exception is such that a single dwelling is only excepted if the area of land covered by the construction work is less than 100 m^2. In effect this means that the exception relating to single dwelling is exactly the same as that which applies to 'any other type of construction work'.

Appealing the decision of a SuDS Approval Body (SAB)

4. The Sustainable Drainage (Appeals) (Wales) Regulations 2018 provide for a right of appeal against a refusal (or deemed refusal) of SAB approval, or against the imposition of a condition on an approval, or against the refusal (or deemed refusal) to adopt the SuDS scheme.

5. Welsh Ministers may affirm or substitute the decision. In affirming a decision Welsh Ministers may modify the decision by removing, substituting or imposing conditions. Conditions may include non-performance bonds.

6. Appeals may also be made against the service of enforcement notices where works have commenced without a SuDS approval, there is a breach of a condition or where SuDS are not built in accordance with the approved details.

7. In substituting or modifying a decision about an application for approval, the Welsh Ministers must have regard to the national standards for sustainable drainage, and any national guidance.

8. The relevant legislation provides for the Welsh Ministers to appoint a person to report to them, so that they can then decide the appeal. In SuDS appeal cases, the Planning and Environment Decisions Wales (PEDW) exercises that decision-making function on behalf of the Ministers. As such, Inspectors are appointed to report by the Welsh Ministers and then authorised by PEDW to decide the appeal. In practice, this is simply a legal distinction and it is expected that Inspectors will follow the same process they would when determining other types of appeals.

Conditions

9. SuDS may be approved subject to conditions. The Guidance states that conditions may, amongst other things, relate to:

- construction of the drainage system,
- technical matters such as discharge rate,
- modifications of a proposed drainage plan,
- associated fees and/or payment of a fee in relation to work done by the SAB in connection with approval,
- securing agreements for non-performance bonds,
- the maintenance plan and the means of funding for the scheme for its
- design life,
- testing periods for the SuDS following construction,
- inspections by the SAB before, during and after construction.

10. The tests for conditions are almost identical to those set out in Circular 16/14. Conditions should not duplicate requirements of other legislation and should be:

- necessary,
- relevant to the SAB approval and adoption process,
- relevant to the development to be approved,
- enforceable,
- precise, and
- reasonable in all other aspects.

SuDS Enforcement

11. The Sustainable Drainage (Enforcement) (Wales) Order 2018 sets out the SAB's powers and the procedures relating to appeals. If a developer breaches the requirement for approval (including breach of conditions), the approving body may give[1] an enforcement notice requiring the developer to take steps to remedy the breach. An enforcement notice may be given at any time before a drainage system is adopted but not later than 4 years after the breach occurs.

12. An enforcement notice must be in writing and must specify—
    (a) the construction area to which the notice relates,
    (b) details of the breach,
    (c) the steps which the developer must take to remedy the breach,
    (d) the date by which the steps must be taken,
    (e) rights of appeal, including the time limit for making an appeal, and
    (f) the consequences of non-compliance with the notice[2].

[1] The term 'give' is used throughout, not served.
[2] A fine up to £20,000

13. For construction work commenced without approval, the enforcement notice must require the developer:

(a) to apply for approval (the application to be made as if construction work had not commenced), or
(b) to restore the construction area to the condition it was in before the construction work began.

14. For a breach of a condition of approval, the enforcement notice must require the developer:

(a) to carry out work to ensure the drainage system complies with the conditions of approval, or
(b) to restore the construction area to the condition it was in before the construction work began.

15. For construction work that does not conform to the approved proposals, the enforcement notice must require the developer:

(a) to carry out work to ensure the drainage system complies with the approved proposals, or
(b) to restore the construction area to the condition it was in before the construction work began.

16. A developer may appeal on the following grounds:

(a) the decision was based on an error of fact;
(b) the decision was wrong in law;
(c) the decision was unreasonable;
(d) there is no breach of the requirement for approval.

An enforcement notice is suspended until an appeal is determined or withdrawn.

17. Further guidance on the various SuDS Enforcement Notices is provided in the Welsh Local Government Association Sustainable Drainage in Wales – User Guides for SAB Enforcement Templates.

Statutory Standards

18. According to the statutory standards Suds' schemes should aim to:

- manage water on or close to the surface and as close to the source of the runoff as possible;
- treat rainfall as a valuable natural resource;
- ensure pollution is prevented at source, rather than relying on the drainage system to treat or intercept it;

- manage rainfall to help protect people from increased flood risk, and the environment from morphological and associated ecological damage resulting from changes in flow rates, patterns and sediment movement caused by the development;
- take account of likely future pressures on flood risk, the environment and water resources such as climate change and urban creep;
- use the SuDS Management Train, using drainage components in series across a site to achieve a robust surface water management system (rather than using a single “end of pipe” feature, such as a pond, to serve the whole development);
- maximise the delivery of benefits for amenity and biodiversity;
- seek to make the best use of available land through multifunctional usage of public spaces and the public realm;
- perform safely, reliably and effectively over the design life of the development taking into account the need for reasonable levels of maintenance;
- avoid the need for pumping where possible; and
- be affordable, taking into account both construction and long term maintenance costs and the additional environmental and social benefits afforded by the system.

19. In addition, applications should be accompanied by proposals for a maintenance plan and the means of funding for the scheme for its design life.

Standard S1 - Surface water runoff destination

20. The aim of S1 is to ensure that runoff is treated as a resource and managed in a way that minimises negative impact of the development on flood risk, the morphology and water quality of receiving waters and the associated ecology.

    Priority Level 1: Surface water runoff is collected for use;
    Priority Level 2: Surface water runoff is infiltrated to ground;
    Priority Level 3: Surface water runoff is discharged to a surface water body;
    Priority Level 4: Surface water runoff is discharged to a surface water sewer, highway drain, or another drainage system;
    Priority Level 5: Surface water runoff is discharged to a combined sewer.

21. Rainwater should be collected for non-potable use where practicable. As much of the runoff as possible (subject to technical or cost constraints) should be discharged to each destination before a lower priority destination (level) is considered. Priority Level 1 is the preferred (highest priority) and 4 and 5 should only be used in exceptional circumstances.

Standard S2 - Surface water runoff hydraulic control

22. The aim of Standard S2 is to manage the surface water runoff from and on a site to protect people on the site from flooding from the drainage system for

events up to a suitable return period, to mitigate any increased flood risk to people and property downstream of the site as a result of the development, and to protect the receiving water body from morphological damage.

23. Surface water should be managed to prevent, so far as possible, any discharge from the site for the majority of rainfall events of less than 5mm.

Standard S3 - Surface water quality management

24. Standard S3 seeks to minimise the potential pollution risk posed by the surface water runoff to the receiving water body.

Standard S4 – Amenity

25. Standard S4 seeks to ensure that the design of the surface water system maximises amenity benefits and where possible, SuDS should enhance the provision of high quality, attractive public space which can help provide health and wellbeing benefits, improve liveability for local communities and contribute to improving the climate resilience of new developments.

Standard S5 – Biodiversity

26. The design of the surface water management system should maximise biodiversity benefits. Standard S5 addresses the design of SuDS to ensure, where possible, they create ecologically rich green and blue corridors in developments and enrich biodiversity value by linking networks of habitats and ecosystems together. Biodiversity should be considered at the early design stage of a development to ensure the potential benefits are maximised.

Standard S6 – Design of drainage for Construction, Operation and Maintenance

27. Standard S6 seeks to ensure that SuDS are designed so they can be easily and safely constructed, maintained and operated, taking account of the need to minimise negative impacts on the environment and natural resources.

Casework

28. A limited number of SAB appeals have been received to date, some of which relate to SAB enforcement cases and raise issues regarding whether approval is necessary due to the timing work commenced and the size of construction work in relation to previous hardstanding at the site. Cases received have largely been dismissed based on limited evidence being submitted in support of the schemes to demonstrate compliance with the Statutory Sustainable Principles and associated Standards. Appendix 1 contains a list of recently determined case references at the time of updating this chapter. However, a more recent list may be available by searching CRM and iShare. This guidance will be reviewed periodically and updated as necessary.

29. Local authorities (and, therefore, we) must have regard to the Statutory Guidance when determining SuDS applications and appeals and the relevant statutory instruments.

30. Paragraph 4.2 of the Frequently Asked Questions Guide asks '*How do the* Statutory *SuDS Standards work and what do developers need to do to demonstrate compliance?'*. It goes on to state that to be compliant with Standard S1, developers will need to demonstrate how they have applied the hierarchy criteria from the preferred priority Levels 1, 2 and 3. And what the exceptional circumstances are, if the least preferred priority Levels 4, 5 are proposed.

31. The Statutory Standards provides some clarification: *'Standard S1 comprises 5 Levels with the most preferred level represented by Level 1, and movement from Level 1 to lower levels determined by demonstration that the exception criteria apply. Level 1 should be met to the maximum extent possible, with lower levels used where required and where appropriate justification can be provided. Different levels may be suitable for different parts of a site, and more than one level may be required to effectively drain the site to meet the requirements of the Standards*'.

32. Standards S2 to S6 state the minimum design criteria that all SuDS must satisfy and how they should be constructed, maintained and operated and to be compliant with these Standards, developers will need to demonstrate how the proposed SuDS scheme satisfies the criteria in each.

33. The purpose of a non-performance bond is to ensure that the SAB has the means to remediate poorly constructed or incomplete SuDS. The value of the bond must not exceed the SAB's best estimate of the maximum likely cost of work required to ensure that the drainage system accords with approved proposals.

34. Estimates of costs are expected to be subject to detailed discussions between the SAB and the developer. The evidence required to calculate the bond value should normally be provided by the developer as part of the SuDS application and costs of construction should be based on the most up-to-date information available. The SAB should calculate the bond using industry standard guidance. Where this is not possible, the SAB will need to make the best estimate of the cost implications for the non-performance bond. The starting point for calculating the value of the bond is the likely cost of the works needed for the construction of the SuDS proposals as approved.

35. Disputes are likely to revolve around the calculation of the cost of the works. One would expect both sides to present evidence and the approach will be similar to cases where viability is an issue. Although costs and viability have been raised in cases received to date, no detailed evidence regarding viability has been presented. Whether specialist advisors will need to be commissioned will be kept under review.

Implications for other casework

36. SAB Consent is a technical approval process much like Building Regulations. A large number of planning applications (and some applications for prior approval) will be caught by the requirement for SAB Consent. As such, Inspectors will need to be careful not to seek to duplicate the requirements of that separate legislation when considering drainage issues at appeal.

37. It should be borne in mind that not all schemes are captured by the requirement for SAB consent (e.g. most schemes where the construction area would be under 100m^2) and where they are not, Inspectors will need to address drainage issues in the usual way.

38. Although the SuDS guidance states that there may be a need for planning obligations, as it is a separate approval, imposing conditions or requiring a Section 106 agreement is likely to be unnecessary as they would duplicate other legislation, unless it can be demonstrated that there is a planning purpose for the obligation or condition. For example, a condition simply prohibiting the commencement of development before SuDS approval would not meet the tests in Circular 16/14.

39. Where there is sufficient evidence to show that a scheme would require SAB Consent, Inspectors should refer to that fact and explain that it would not be appropriate to duplicate controls that are secured by other legislation. Where it is not clear as to whether SuDS Consent is required, Inspectors may need to ask the parties for their view and potentially seek further information before coming to a conclusion on this issue.

40. LPAs may argue that a scheme as proposed cannot accommodate a SuDS that would comply with the National Standards. Technical Advice Note (TAN) 15: Development, flooding and coastal erosion acknowledges that the SuDS approval process is independent of the planning process and there is a risk of proposals complying with one regulatory system but not the other. TAN 15 advises simultaneous applications are the best approach but acknowledges it is not always feasible. Where planning permission is sought prior to SAB approval, the applicant will be expected to provide a Drainage Statement as part of the planning application. Figure 3 of TAN 15 sets out the requirements of a Drainage Statement.

41. Paragraph 7.9 of TAN 15 notes inadequate Drainage Statements and flawed drainage arrangements may be a reason for a planning authority to refuse the planning application..

42. There are a small number of exemptions to the requirement for SAB Consent. However, it is likely to be required if:

- The development has drainage implications and;
- The construction area is over 100m^2 and;
- There was no undetermined planning application before the LPA on 7 January 2019.

or

- Planning permission was granted in outline and an application for approval of the final reserved matters has not been submitted before 7 January 2020.

43. If there is doubt about whether a development is exempted from the requirement for SAB Consent, advice can be sought from the Planning and Environment Team. TAN 15 also refers to SuDS being encouraged in all circumstances as the most effective way of managing surface water in a sustainable way.

44. For Local Development Plans, the SuDS requirements are likely to impact on the delivery of development. Viability studies should demonstrate how meeting the SuDS requirements impacts on the viability of sites and the delivery of the LDP's requirements for affordable housing etc. The Statutory Guidance says: '*It is important that strategic planning provides for SuDS, ensuring space within development so that surface features which are more likely to provide multiple benefits can be accommodated and SuDS do not have to be "squeezed in" and compromises made*[3]*'*. The extent to which meeting the SuDS requirements impacts on density/capacity of sites will, therefore, also have to be considered.

45. TAN 15 states Development Plans should promote the control of surface water as near to its source as possible for all developments. Along with other flooding considerations, drainage should be factored into the site selection process at the earliest opportunity, as the management of water will influence key issues such as layout and density of development.

46. Similar issues regarding the effect of SuDS requirements may also be brought forward in other types of casework where viability is a consideration.

3 Paragraph 2.18

Appendix 1

Recent SuDs Cases determined (at the time of updating this chapter) – a more recent list may be available by searching CRM.

Reference	Type of appeal	Decision date
APP/K6920/C/21/3269756	SUDS Enforcement Notice Appeal	09/06/2021
APP/X6910/C/21/3277155	SUDS Enforcement Notice Appeal	07/01/2022
CAS-01333-Q8G7P0	Appeal against SAB refusal	25/02/2022
CAS-01572-N2P2C5	Appeal against SAB refusal	28/04/2022
CAS-01895-X7V8J8	SUDS Enforcement Notice Appeal	10/06/2022
CAS-02749-B0V0N3	SUDS Enforcement Notice Appeal	02/10/2023
CAS-02767-W6D9K3	Appeal against SAB refusal	03/10/2023