cornerstone barristers

Drainage and Flood Risk: recent updates

Harriet Townsend KC and Ben Du Feu

17 November 2025

Sustainable Drainage Systems – Harriet Townsend KC

Sustainable Drainage Systems

What are they?

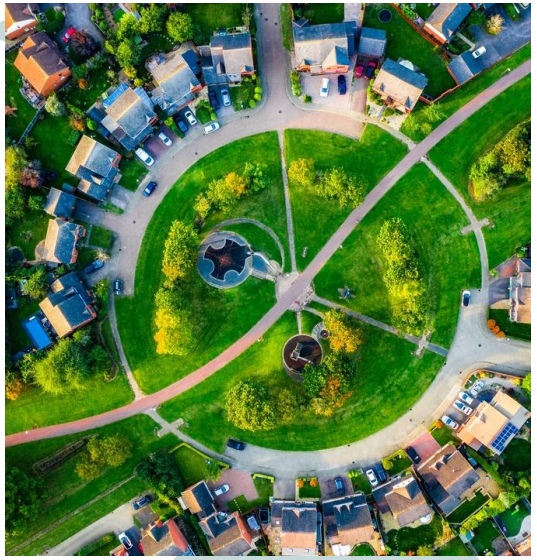
SuDS “are designed to control surface water run off close to where it falls, combining a mixture of built and nature-based techniques to mimic natural drainage as closely as possible, and accounting for the predicted impacts of climate change.”

PPG ID: 7-055-20220825

“A sustainable drainage system controls surface water run off close to where it falls, combining a mixture of built and nature-based techniques to mimic natural drainage as closely as possible, and accounting for the predicted impacts of climate change. The type of system that would be appropriate will vary from small scale interventions such as permeable paving and soakaways that can be used in very small developments to larger integrated schemes in major developments”.

NPPF Glossary

NPPF §182



“Applications which could affect drainage on or around the site **should** incorporate **sustainable drainage systems** to control flow rates and reduce volumes of runoff, and which are proportionate to the nature and scale of the proposal.

These should provide **multifunctional benefits wherever possible**, through facilitating improvements in water quality and biodiversity, as well as benefits for amenity.

Sustainable drainage systems provided as part of proposals for major development should:

a) take account of **advice from the Lead Local Flood Authority**;

b) have appropriate proposed minimum operational standards; and

c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.“

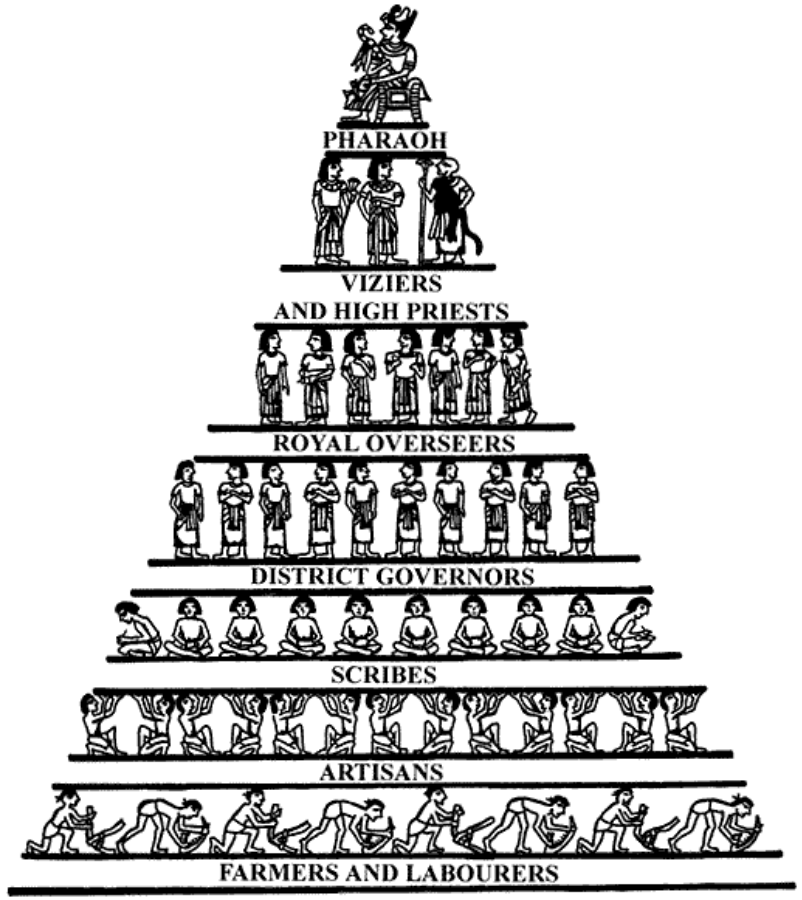
[emphasis added in bold]

The Drainage Hierarchy

"Where possible, preference should be given to multi-functional sustainable drainage systems, and to solutions that allow surface water to be discharged according to the following hierarchy of drainage options:

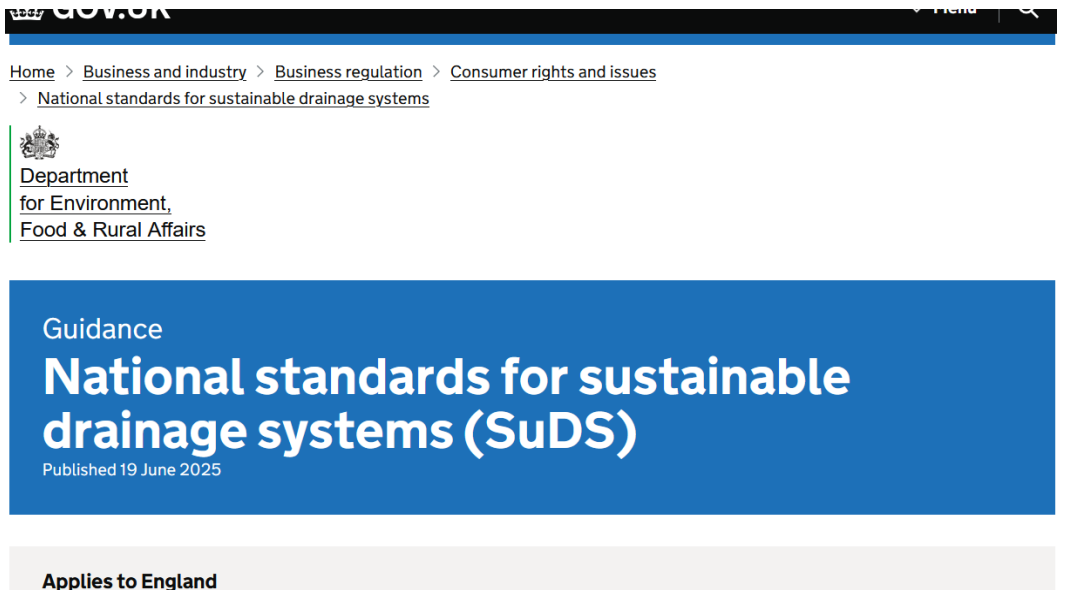
1) into the ground (infiltration);
2) to a surface water body;
3) to a surface water sewer, highway drain, or another drainage system;
4) to a combined sewer."

PPG ID 7-056-20220805

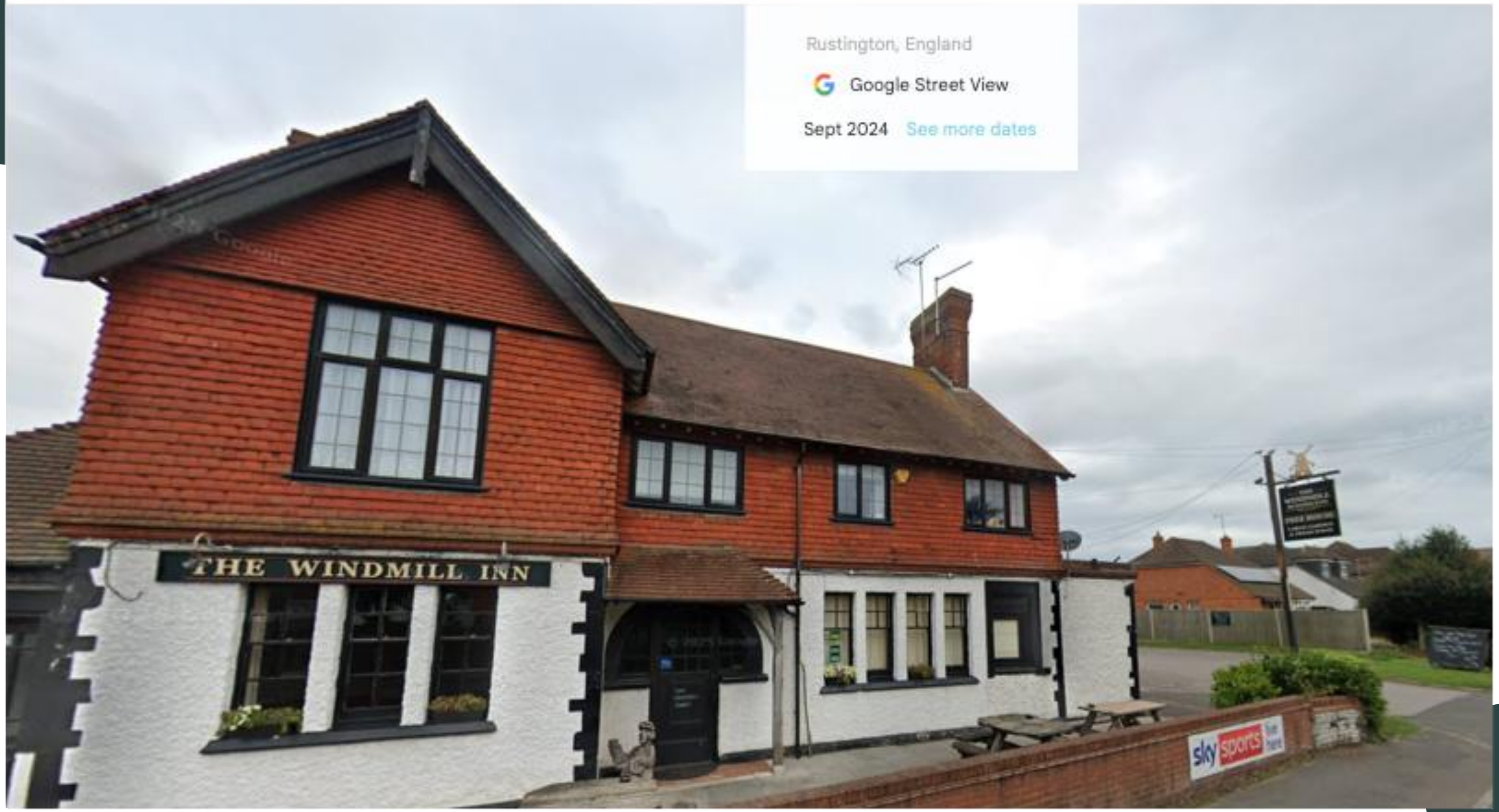


Appeal Decision 24-7-25

21. The SuDS hierarchy operates on an evidential basis. **This is emphasised by the National Standards which make clear that to utilise a lesser priority final destination, appropriate evidence shall be provided that demonstrates all higher priority final destinations have been utilised to the maximum extent practicable**. In this case the scheme has failed to justify movement beyond consideration of infiltration, and I see no reason why any departure from the above should be agreed. Further consideration of the other options identified is nonetheless necessary in order to fully assess the scheme's effects.



Google Maps 42 Mill Ln



Appeal 24-7-25

- Full application
- A had an option to purchase
- Underlying geology chalk
- Preliminary Ground Investigation Report
  -> evidence of >1 anomaly under part
- 2 drainpipes connected to foul sewer
- Absence of evidence re existing soakaway

- Proposed to connect all s.w. to public sewer
- The sewer is designated foul-only
- Attenuation tank releasing at <2l/s

Timing

The layout and function of drainage systems needs to be considered at the start of the design process for new development, as integration with road networks and other infrastructure can maximise the availability of developable land. [PPG ID: 7-055-20220825]

Consideration of sustainable drainage systems early in the design process for development, including at the pre-application or master-planning stages, can lead to better integration, multi-functional benefits and reduced land-take. [PPG ID: 7-056-20220825]

What next?

- Government response to the Cunliffe Review is awaited. Is this a *long grass* or a *grasp the nettle* moment?
- New and detailed Guidance has been published for sewerage undertakers on the preparation of DWMPs under the new s.94A duty.
- Cause for reflection: the legal right under s.106 of the WIA 1991 to connect to a public sewer, and the environmental consequences of doing so.


Flood

FLOOD RISK AND THE SEQUENTIAL TEST – BEN DE FEU

The Sequential Test

NPPF 174

"…The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding…"

Yatton, North Somerset

- 190 dwellings
- Flood Zone 3a
- 12 sites sequentially preferable
- Sequential test failed
- Development safe for its lifetime and would not increase flood risk elsewhere
- Failure to pass sequential test, not fatal and not a ‘strong reason for refusal’ under 11(d)(i) of the NPPF

New PPG - 027

In applying the Sequential Test a proportionate approach should be taken.

Site-specific flood risk assessment demonstrates clearly that development would:
- remain safe from current and future surface water flood risk for the lifetime of the development
- without increasing flood risk elsewhere

then the sequential test need not be applied.

ALDI SECRETARY OF STATE DECISION

Aldi, Winnersh

- Flood Zone 3b
- Incompatible and ‘should not be permitted’
- Material consideration but not decisive
- Safe for lifetime and would not increase flood risk elsewhere
- Not inappropriate development despite being contrary to aspects of flood risk policy

Questions

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