

Project area: Planning; Governance; SuDS implementation
 Intended audience: Practitioners; Policy makers; SuDS champions; General public

Introduction

Sustainable drainage systems (SuDS) are considered a progressive approach to dealing with the challenges posed by flood risk and environmental change, while also providing a host of additional benefits. SuDS, such as swales, ponds, green roofs or rain gardens, help manage water quantity, improve water quality, amenity and biodiversity. After the summer floods of 2007, SuDS were recognised as one of the vital approaches to tackling the risk of surface water flooding. In 2010, the Flood and Water Management Act (FWMA) proposed the enactment of Schedule 3 (S3), which would have made SuDS mandatory on new planning proposals. However, in England, the implementation of S3 was resisted and in 2014, the Government announced that SuDS would be implemented through a strengthened planning system. Our research takes a broader governance perspective and investigates the implementation of SuDS through this strengthened planning system to date.

Practical application of this research:

- Presents a broader governance perspective to understand the implementation of SuDS in England
- Provides practitioners with a more precise description and interpretation of what is problematic regarding current policy, allowing them to re-think and re-frame the recurring implementation issues in practice
- Helps practitioners and policy makers understand the potential implications of different policy designs through which SuDS are delivered in England and Wales (strengthened planning policy vs S3)
- It explains the strengths and weaknesses of the two policy designs

The design spaces of SuDS policy

The decision to implement SuDS through the strengthened planning system (rather than S3) provides us with the opportunity to compare the two different policy approaches (Figure 1). On the one side, S3 represents a regulatory regime with mandatory and integrated functions for the implementation of SuDS. On the other side, the strengthened planning system operates as an adaptive and flexible form of governance, buttressed by light regulation and relying on existing arrangements and wider stakeholder involvement. If we investigate the two policy approaches from the perspective of the policy design space they occupy, we uncover that they contrast even more. S3 is a form of *packaging*, an ideal design space, where the Government designs policy to address a specific problem. This form of policy design space is rare nowadays, as much of policy in the UK is responding to existing constraints and resorts to the ‘patching’ of existing legislation. The strengthening of the planning policy represents a form of *non-design* space, where the Government is unwilling to design policy and does not have the power to change the status quo.

FWMA 2010 Schedule 3 Arrangements	Strengthened Planning System Arrangements
SuDS mandatory on new development	Local planning policy gives priority to SuDS, except if demonstrated to be inappropriate
National, mandatory and comprehensive standards for SuDS	Non Statutory SuDS technical standards published by DEFRA
SuDS Approval Body (SAB) would be the designated body to approve SuDS against statutory standards	Management of surface water is now a material consideration to be taken into account when determining a planning application. Planning conditions and obligations as main tools to secure SuDS
SABs would adopt and maintain in compliance with national standards	Applicants are to ensure minimum operational standards, have appropriate maintenance in place and where possible, provide multiple benefits

Figure 1: Comparison between the provisions of the Schedule 3 and strengthened planning system arrangements

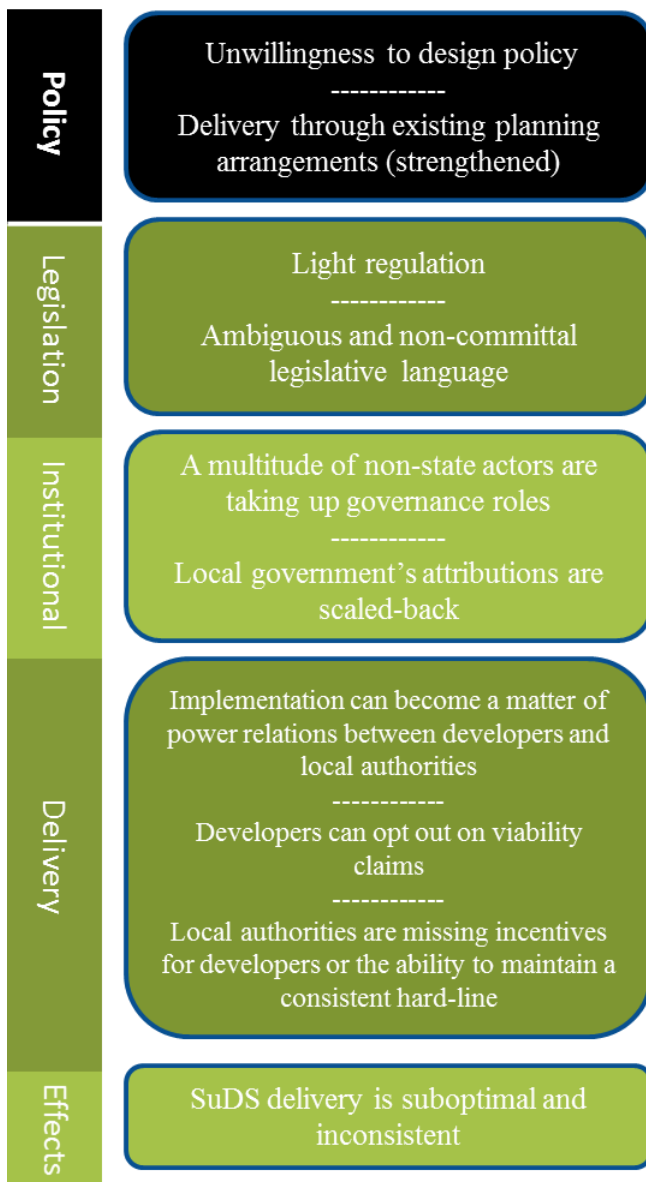


Figure 2: Illustration of the effects of the non-design policy choice

The effects of the non-design policy choice

Justified as an attempt to avoid an increase in bureaucracy, the decision to drop the implementation of S3 meant that the Government did not design new policy, but instead amended the planning system for implementing SuDS. This political decision has produced specific legislative, institutional and practical effects (Figure 2). Much of the evidence to date suggests that the implementation of SuDS has not been straightforward, with SuDS uptake being suboptimal. The main barriers identified relate to the lack of clarity over maintenance arrangements and the fact that developers can opt out of SuDS on viability grounds, by arguing that they drive the cost of development up.

These barriers are a symptom of the wider issue caused by the fact that the 'strengthening' of planning policy has resulted in ambiguous and non-committal legislation, which has a greater reliance on the goodwill of stakeholders to deliver SuDS. In these circumstances, developers are missing an incentive to implement SuDS, as planning policy provides a series of loopholes they can employ to opt out. Local authorities lack the legislative backing and resources to either provide valuable incentives to developers or impose a consistent hard-line. This does not mean that SuDS are not implemented in England, but that their implementation is likely to remain suboptimal and inconsistent, a matter of power relations or reliance on strong local governance arrangements between key stakeholders; developers, local authorities (planning and Lead Local Flood Authorities) and Water Companies.

Comparing and assessing the two policy designs

In January 2019, S3 was introduced in Wales for implementing SuDS. S3 can be characterised as a regulatory system, located on the other side of the governance spectrum from the 'strengthened' planning policy in England. However, it remains an open question whether S3 is a 'silver bullet' solution to successful implementation of SuDS. These will still need to be balanced out against other priorities in planning and pre-application discussions remain crucial to achieve multiple benefits. Another issue that will require investigation is the role of collaborations and partnerships with institutions and stakeholders. A potential risk is that the regulatory nature of the S3 could downplay the collaborative element in the process of implementing SuDS. We still need a collective decision-making process that is consensus-oriented, and deliberative, otherwise S3 could lead to a lack of innovation and limitations through an overly top-down/state centric approach. Our subsequent aim is to investigate the implementation of SuDS through S3 in Wales, as it provides a comparative window of opportunity to understand the pros and cons of each style of governance.

Research team:

Open University: Tudorel Vilcan (tudorel.vilcan@open.ac.uk), Karen Potter (karen.potter@open.ac.uk)