

**Interim Guidance on the transfer of sewers to water companies under The Flood and Water Management Act****Purpose**

BCA technical guidance notes are for the benefit of its members and the construction industry to provide information, promote good practice and encourage consistency of interpretation for the benefit of our clients. They are advisory in nature, and in all cases the responsibility for determining compliance with the Building Regulations remains with the building control body concerned.

This guidance note is based upon information available at the time of issue and may be subject to change. The Approved Documents should be consulted for full details in any particular case.

Introduction

The introduction of this legislation on 1st October 2011 has caused considerable concern and confusion to all BCB's. In an attempt to resolve this BCA has been in discussion with DEFRA, DCLG and Water UK over the problems and lack of information from the bodies concerned..

Key Issues

Until recently there has been little or no attempt to ensure that all water companies implement the requirements in a standardised format, although it should be noted there is general agreement that the objectives of controlling 'building over situations' are well founded, it is the expectations of water companies on building control services that is causing concern.

To summarise:

- Water UK has recently formed a Building Over Review Group (BORG), chaired by Julian Hill of Welsh Water, to coordinate water industry views. Their remit is to consider technical and process aspects of building over only; costs and fees are specifically excluded.
- There is no legal provision for a building-over agreement, other than a general duty of care owed to all statutory undertakers not to damage their plant or unduly restrict their access. Water UK through 'BORG' is considering referring to "building-over consents" rather than building-over agreements, which would tie in with CON29 R Question 3.3 for local authority land charge search purposes.
- It is expected that mapping of newly adopted sewers will be carried out as opportunities arise (e.g. responding to problems); there are no plans for a comprehensive mapping programme
- Exempt buildings – are still exempt. All building owners will have been notified by the water companies of the change in legislation and their obligations. The problems associated with exempt buildings and the building control function undertaken by approved inspectors was not fully appreciated by many of the water companies and Water UK, in recognition of this further guidance is to be considered by 'BORG'.

Guidance to Building Control Bodies on how to proceed until further guidance is issued by DEFRA/WATER UK.

- Where there is agreement and understanding between local authorities/approved inspectors and water companies, you are encouraged to continue with that working agreement until such time as Water UK is in a position to issue national guidelines.
- If there are no local arrangements and in the absence of Mandatory Build Standards, builders should be advised to continue to follow the guidance in Approved Document H when designing and installing new foul drainage. However consideration should be given to the fact that when completed, shared drainage systems will be adopted by the water companies and it is advisable for builders to contact them in advance of carrying out the work to check for any local requirements.
- The Private Sewers and Lateral Drains legislation does not amend the Building Regulations in any way, there is no obligation on the part of Building Control Bodies to consult, unless the building is compromising a drain or sewer shown on the map of sewers, in accordance with the current requirements of H4 (this opinion is also supported by

DCLG).

- BCB's do however owe a duty of care to our 'customers', and where we become aware that a building is over or in close proximity to something that would be a public sewer building owners and/or the contractor should be advised to contact the relevant sewerage undertaker and obtain their consent to continue. Although it is extremely unlikely that retrospective action would be taken in respect of a failure after 1st October 2011 concerning the duty of care not to damage or restrict access, it cannot be ruled out.
- Local Authorities **should not** reject Initial Notices under Regulation 13 of the Building (Approved Inspectors etc) Regulation 2010 where it cannot be expected that the Approved Inspector would be aware of a newly adopted sewer where it is not shown on the map of sewers and so would not be obliged to consult the sewerage undertaker in accordance with the current requirements of H4. Where the Local authority is aware that a development on an Initial Notice could be affected by a newly adopted sewer they should inform the Approved Inspector so that the person intending to carry out the work can be advised to contact the sewerage undertaker as detailed above.

For the Future

Water UK wish to agree the water industry position through 'BORG' and will then report back to an industry group consisting of BCA, DCLG, DEFRA, Water UK and representatives of the conservatory industry. It is unlikely that any national document will be available before April 2012. We hope that an interim statement will be produced by Water UK following meetings during September of BORG to inform Architects, developers, builders etc. of expectations.