

WYRE FOREST DISTRICT COUNCIL

CABINET

23rd JUNE 2009

**Flooding and Land Drainage –
Enforcement Protocol and Flood and Water Management Bill**

OPEN	
SUSTAINABLE COMMUNITY STRATEGY THEME:	A better environment for today and tomorrow
CORPORATE PLAN AIM:	A Sustainable Environment
CABINET MEMBER:	Councillor Tracey Onslow
RESPONSIBLE OFFICER:	Director of Planning and Regulatory Services
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APPENDICES	1. Flood Related Funding Statement 2. Worcestershire Land Drainage Enforcement Protocol. 3. Summary of Draft Flood and Water Management Bill 2009 Proposals

1. PURPOSE OF REPORT

- 1.1 To seek agreement on the allocation of remaining flood related external funding.
- 1.2 To seek agreement on the adoption of a common Worcestershire Land Drainage Enforcement Protocol.
- 1.3 To advise members on the progress and possible implications of the Draft Floods and Water Management Bill 2009 in Parliament.

2. RECOMMENDATION

The Cabinet is asked to DECIDE that:

- 2.1 **The remaining flood related external funding be allocated as described in the Flood Related Funding Statement in Appendix 1 and that the Director of Planning & Regulatory Services be given delegated authority, in consultation with the Cabinet Member for Housing & Environmental Services, to make any necessary amendments to the apportionment of the monies.**
- 2.2 **The potential implications of the Draft Floods and Water Management Bill 2009 as set out in Appendix 3 be noted.**

The Cabinet is asked to RECOMMEND to Council that:

2.3 The Worcestershire Land Drainage Enforcement Protocol as set out in Appendix 2 be adopted as normal working practice.

3. BACKGROUND

- 3.1 The Council is given permissive powers regarding land drainage under the Land Drainage Act 1991 in relation to ordinary watercourses in the District. In addition there are a range of other legislative provisions relating to drainage to properties and land that can be applied by the Council. Historically the Council has responded to a number of localised issues, taken enforcement action and carried out clearance of watercourses at certain locations.
- 3.2 Issues of land drainage and the role of the Council were brought into focus in responding to the severe weather and flooding that occurred in June and July 2007. The Midlands region was hit heavily by intensive rainfall on saturated grounds. The Wyre Forest District was no exception. Watercourses throughout the District were swollen quickly and the resulting flooding caused damage to land, properties, roads and other infrastructure and affected many people.
- 3.3 The Council response included the carrying out of emergency clearance work to some watercourses, providing grants to individuals affected, revising emergency response arrangements, providing watercourse clearance grants and the appointment of the Watercourse Officer as a temporary contract. Through the Watercourse Officer, the Council has led the co-ordination of local activity and multi-agency approaches in Wolverley, Wribbenhall and Bewdley, as well as reviewing watercourses, providing direct advice and assistance and taking enforcement action where necessary.
- 3.4 In response to the floods, the Government, Red Cross and Advantage West Midlands all allocated funding to the Council for use to benefit the local communities and individuals affected by the flooding. Out of this funding the Council paid direct grants to individuals, the watercourse clearance grants and funded the purchase of an emergency response vehicle. There is approximately £140,000 remaining of this fund.
- 3.5 The roles of the District Council, County Council, Environment Agency and others were formally reviewed by Sir Michal Pitt in his scrutiny of the response to the Summer Floods. This resulted in proposed policy changes and most recently the publication of the Draft Floods and Water Management Bill. In it's present form the draft bill maintains the role of the District Council in relation to ordinary watercourses as well as adding the requirement to act as part of any County-wide strategy, led by Worcestershire County Council. There will also be the need to feed into the County level flood risk mapping and planning using the local knowledge obtained through the Watercourse Officer in particular.
- 3.6 In Wribbenhall, the Riddings Brook was hit by rainfall from Trimpley. The runoff from land overwhelmed the capacity of a culvert at the rear of Riddings Close. The resulting flood water washed down The Queensway affecting over 40 properties. This flooding was exacerbated by apparent under capacity in the local drainage systems, individual property vulnerabilities, Highway issues and the condition of the

culvert itself. Since the formation of Multi Agency Working Group, the covering grid has been replaced with extra trash screens and an upstream storage area is being hydraulically modelled. Works have been carried out to many properties and Severn Trent have fitted non-return valves to reduce sewage flooding risk. Highway alterations are due in the near future. There remains work to be done on many individual properties and there is potential for further joint work with the Environment Agency and land owners to improve upstream storage capacity.

- 3.7 Snuff Mill in the Low Park area of Bewdley was affected in a similar way when an underground culvert was overwhelmed, sending flows over land affecting more than 20 properties. The resulting damage led to the subsequent collapse of this culvert and similar levels of damage on many of the upstream storage systems, leaving the watercourse in a critical risk condition. Riparian owners have used and exhausted household insurances and other schemes of funding leaving a large shortfall in available capital.
- 3.8 Wolverley was flooded in the Summer of 2007 and twice since. Wolverley residents have looked to the Environment Agency and the Kidderminster Flood Alleviation Scheme at Puxton Marsh as a cause of concern. However, subsequently a recent independent report has formally dismissed this as a cause. Understandably, the residents are still frustrated by the increased frequency of flooding they have experienced. The Council and the Environment Agency are assisting by taking action where possible to help reduce the flood risk for the villagers. Much clearance work has been advised upon and assisted but there remains the need to assess in greater detail the condition of the watercourse and potential options for reducing flood risk.
- 3.9 Residents of Chaddesley have also acted collectively in response to local flooding issues and have been assisted by the Watercourse Officer.
- 3.10 The Environment Agency have access to regional funding for major schemes of work that could be carried out in a number of locations in the District. In order to bid for such funding, the Council must first obtain expert reports with recommendations for actions to reduce/mitigate flood risk. One of the criteria for prioritising funding applications is the provision of contributory funding from the Council or other sources. The Council has commissioned some initial assessment work on the condition of all its watercourses by Royal Haskoning who have already carried out the Council's Strategic Flood Risk Assessment work as part of the Local Development Framework evidence base but further, more technical, work will be required for funding applications.

4. KEY ISSUES

- 4.1 The Council must determine the most appropriate use for the flood related money that is still held. The detailed recommendation on how to allocate the funding is set out in Appendix 1, including existing commitments. As some of the exact costs are not yet available, flexibility should be given to the Director of Planning and Regulatory Services and the Cabinet Member for Housing and Environmental Services to vary these amounts and determine the most appropriate allocation for any residual funding.
- 4.2 The District has a number of communities that would benefit from continued support and facilitating bids for additional resources from the Environment Agency.

- 4.3 The Worcestershire Land Drainage Enforcement Protocol (Appendix 2) has been developed to guide the enforcement process of local authorities in Worcestershire and is in accordance with the existing Housing Enforcement Policy.
- 4.4 The draft Flood and Water Management Bill 2009 was published for consultation in April 2009. It maintains the existing role of the Council in respect of ordinary watercourses but adds the duty to work as part of a County level strategic approach to flooding and land drainage issues. More detail will be forthcoming as the Bill progresses, however a short synopsis of current proposals is contained in Appendix 3.

5. FINANCIAL IMPLICATIONS

- 5.1 Grant income received and expenditure to date is set out in the table below for information:-

Flood Grant Income and Expenditure
Summary as at 2nd June 2009

<u>Income</u>	<u>Total</u>
Communities for Local Government	(310,000.00)
Advantage West Midlands	(44,000.00)
Red Cross	(47,688.69)
Total Income	(401,688.69)
<u>Expenditure</u>	
Grant Payments to the Public	110,708.52
Consultancy	34,284.40
WFDC Costs (inc. Watercourse Officer, Flood Sacks etc.)	117,425.93
Total Expenditure	262,418.85
Balance of Capital and Revenue Grant Remaining	(139,269.84)

- 5.2 No additional Council funding is required at this point however once the temporary Watercourse Officer post contract has concluded (currently May 2010), consideration will need to be given to the Council's role and how best to respond to duties and powers under the Land Drainage Act 1991 and the Flood and Water Management Bill when it is enacted.
- 5.3 The use of the remaining Flood funding gives potential for leverage of additional external funding through Environment Agency Grants for flooding management schemes in the future.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 The Housing Enforcement Policy will still apply to the enforcement of land drainage issues with officers utilising the proposed Land Drainage Enforcement Protocol for consistency in methods of enforcement.
- 6.2 The Private Sector Housing Assistance Policy 2009 already includes for the potential for financial assistance to individuals for individual property measures that reduce/mitigate flood risk.

7. RISK MANAGEMENT

- 7.1 By engaging professional consultants and engineers where appropriate and working with the Environment Agency and other key partners in a multi-agency approach the Council will help minimise any future problems.
- 7.2 Whilst the Council's powers are only permissive, it is considered that a proactive approach to the problems encountered by residents should be adopted in the way set out in this report as it is predicted that without action, the problems will escalate. If further significant works are identified as a result of the investigations that cannot be overcome within existing budgets or met through external funding then a further report to Cabinet will be made.

8. CONCLUSION

- 8.1 The communities within Wyre Forest District look to the Council for leadership on the issues of flooding. The flood related funding that remains can be utilised to respond to existing individual and community needs and also enable applications for funding for major schemes of work.
- 8.2 The Council needs to continue to respond to land drainage issues through the work of the Watercourse Officer in particular and be aware of the potential changes that may come through the draft Bill.

9. CONSULTEES

Corporate Management Team

10. BACKGROUND PAPERS

- 10.1 Draft Flood and Water Management Bill
<http://www.official-documents.gov.uk/document/cm75/7582/7582.pdf>

Flood Related Funding Statement

Appendix 1

The Council has received funding from Government Agencies to assist individuals and communities in relation to flood issues, following the summer 2007 floods. This statement gives the current budget position for this funding and sets out guiding principles for how the remaining funding is to be allocated.

As of 1st June 2009, the Flood related funding budget remaining is £139,269.84. The funding was controlled by the Property and Operational Services Division. The budget has now been transferred to the Planning and Regulatory Services Directorate that delivers the Council's Land Drainage function. The funding is for both capital and revenue spending, with a broad 50:50 split.

It is recommended that the Flood related Funding be allocated as follows:

Issue/Location	Estimated Cost
1. Carrying out of emergency works of repair to Snuff Mill culvert as committed by the former Head of Property & Operational Services.	£25,000
2. Flood resilience and community flood risk reduction measures to properties in Wribbenhall.	£15,000
3. Flood resilience and community flood risk reduction measures to properties in Wolverley.	£15,000
4. Commission consultants' fees to provide flood risk management assessments and proposals regarding identified high risk communities.	£25,000
5. Non-routine maintenance and clearance work to ordinary watercourses.	£15,000
6. Community Group grants for local flood resilience. To facilitate the capacity of local groups to respond to local issues such as volunteers support. Up to £5,000 each group.	£15,000
7. Held as potential contributions to capital works schemes, encouraged by Environment Agency guidelines on prioritising grant funding.	£20,000
8. Extend the Watercourse Officer temporary contract post to August 2010.	£9,000
Total identified allocation	£139,000

The above budget is not restricted to spending in any given financial year. It is proposed that it shall be at the discretion of the Director of Planning and Regulatory Services in consultation with the Cabinet Member for Housing and Environmental Services to undertake minor amendments to the above allocation of funding as appropriate, for example to allocate any residual sums to provide additional potential contributions to major capital schemes.

WORCESTERSHIRE LAND DRAINAGE ENFORCEMENT PROTOCOL – Version 3

Introduction

Current legislation puts District Councils in the lead role in overseeing land drainage matters along “ordinary watercourses”, while “main rivers” are overseen by the Environment Agency. Councils have powers rather than duties to act. Decisions in any case will be down to individual authorities and will depend on the circumstances of each case. The purpose of this protocol is to promote a common approach to the exercise of these powers.

Riparian rights and responsibilities

In most cases the owner of the land next to a watercourse is the “riparian owner”. The legal responsibility for maintaining watercourses rests with the riparian owner. Where a watercourse passes over someone’s land, the riparian owner has to keep it clear to allow water to flow freely through it. Further, it is usually the landowner’s responsibility to maintain a watercourse that forms a boundary with a highway.

Dealing with reports about “ordinary watercourses” that need attention.

When a problem is reported to the district council a site inspection will be arranged, usually within 10 working days to assess the problem, and a decision made upon the course of action to be taken.

If the problem appears to be urgent, attendance will be arranged as soon as possible and in any event within 24 hours.

Assessment

Consideration should be given to all of the facts of the matter, before proceeding with the request for action that may later lead to enforcement and possible prosecution.

Examples of factors that may influence action:

- Are any properties at risk of flooding
- Serious risk of harm
- All other attempts to remedy the situation have failed
- Deliberate and obvious action by landowner to obstruct watercourse
- The obstruction or problem has occurred fairly recently
- Support of parish council, community etc
- Unchecked natural growth has as a result of general lack of maintenance resulted in unacceptable restrictions to flow.
- Change in circumstances makes problem worse

Examples of factors that may influence against action:

- Obstruction has been in place for a number of years
- Action has no community support
- Other options are available
- Minimal risk of harm

- Change in circumstances makes problem better

Initial action

- ▶ Upon inspection, if it is considered that the matter complained of is not the cause of the drainage problem or the proper flow of water is not impeded, and no action is to be taken or required, the complainant will be advised accordingly. In any event, a written communication will be sent to the complainant explaining the reason why no action is to be taken.

Examples of matters not requiring action, may include – minimal silting of watercourse, slight vegetation overgrowth, small quantity of debris etc

- ▶ Where it is considered that action needs to be taken by the relevant landowner, person and/or Agency responsible, the following steps will be taken:-

Enquiries will be made to identify the landowner involved. This may mean conducting a land search to determine the owner of the land and where the land is not registered, making enquiries with appropriate parties, such as the relevant, local parish council, or serving an official land ownership request under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976

Contact will be made with the landowner. The authority will write to the landowner, explaining the problem and setting out the work required to remedy the problem. This will be done by reference to a map supplied with the letter. The deadline for completing the work will normally be 28 days from the date of the letter, although a different period may be specified if the problem requires earlier resolution or if the circumstances justify a longer time period.

Advice regarding what work is needed will be given at any time and take account of local issues that may legitimately cause delays.

If a positive response to the initial letter has not been received within four weeks (or time allowed to complete work), and on inspection no work has been satisfactorily undertaken as required

the matter should be discussed with Legal Services to obtain their agreement for enforcement action to be taken, if necessary.

A formal reminder will then be sent to the landowner giving him 14 days to respond positively before enforcement action is commenced.

Section 25 Notice

If a positive response to the letter of reminder has not been received within 14 days, and on inspection the watercourse's condition has not been remedied and the proper flow of water remains impeded, the authority will proceed to issue a Section 25 Notice.

Before serving a Section 25 Notice notify (in writing) the Environment Agency or other Internal Drainage Board of the proposed action. (Section 26 "Competing Jurisdictions under Section 25".)

- ▶ The relevant papers will be passed to Legal Services and a Notice under Section 25 of the Land Drainage Act 1991 will be prepared.
- ▶ The Notice will include the nature of the works to be carried out and the period within which they are to be carried out, and the right of appeal to a magistrates' court within 21 days of service of the notice.
- ▶ A letter will accompany the Notice and inform the responsible person that in the event of his failure to satisfactorily undertake the work, the local authority may carry out the work themselves and recover from the person responsible the expenses reasonably incurred in doing so? It shall also be stated that without prejudice to their right to exercise that power, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- ▶ Proper service of the Notice will be made.

Enforcement of Notice

Following service of the Notice.

- ▶ The responsible person may appeal the Notice. If the notice is upheld or varied, compliance will be pursued as appropriate.
- ▶ The responsible person may carry out the work to the satisfaction of the authority, or may carry out alternative work which remedies the condition
- ▶ The responsible person will fail to carry out the work to the satisfaction of the authority and the authority may arrange for the work to be completed in default and the reasonable costs incurred recovered.
- ▶ The relevant authority prosecute the responsible person under Section 25(6)b
- ▶ The authority will normally pursue enforcement by way of prosecution rather than by way of works in default. However, the circumstances of the case will always be considered and in exceptional circumstances works in default may be carried out. An example would be where prosecution is not in the public interest as the person responsible is elderly or seriously ill.

If it is considered appropriate to commence prosecution action in the Magistrates Court due regard must be given to the Rules of Evidence and the Crown Prosecution Service Guidelines.

Completion of Proceedings

If the responsible person complies with the Notice and completes the work to the satisfaction of the authority, the authority shall write to him confirming the closure of the case and the end of the action.

Illegal Structures

Where structures, such as pipes or revetments, have been constructed or altered in a watercourse without the consent of the Environment Agency, then the landowner or person responsible may face enforcement action by the Environment Agency in accordance with Section 23 of the Land Drainage Act 1991.

Riparian Rights and Responsibility under Common Law

Riparian landowners have certain rights and responsibilities in relation to a watercourse flowing through or adjacent to their property. These “rights” are based on common law. The “rights” of riparian owners include:

- Presumption of the ownership of the land up to the centre of the watercourse. (For artificial watercourses the presumption is that both banks belong to the land on which the original hedgerow is sited)?
- To receive the flow of water in its natural state without undue hindrance in quality or quantity.
- To discharge uncontaminated run-off from your land.
- The right to protect property from flooding and land from erosion.

The responsibilities of riparian owners include:

- To pass on the flow of water without obstruction, pollution or diversion affecting the rights of others
- Accepting the flood flows through the land maintaining the bed and banks of the watercourses including the removal of debris even if it originated elsewhere. There is no common law duty to improve a watercourse.
- Keeping the bed and banks clear of material that could cause obstructions either on the riparian owners land or by being washed downstream during high flows.
- Keeping clear structures owned by the riparian landowner such as culverts, trash screens, weirs and mill gates.

Appendix 3

**SUMMARY OF PROVISIONS WITHIN THE DRAFT FLOOD AND WATER
MANAGEMENT BILL 2009 AFFECTING DISTRICT COUNCIL ROLES AND
RESPONSIBILITIES**

1. Lead Role on Flooding issues:

The draft Bill places the leadership role of local partnerships on county councils. They will need to ensure that all relevant partners such as district councils and water companies are engaged in developing a strategy for local flood risk management and securing progress in its implementation. This will build on the county leadership role in Local Area Agreements, and will allow them to develop centres of engineering and flood risk expertise alongside their existing highways functions, providing support to other partners and promoting collaboration across the area.

2. Strategic Role:

To fulfil this role county councils would need to ensure they have a strategy for local flood risk management. This will comprise a range of documents and working practices which, among other things, sets out how they will

- convene and coordinate district local authorities, water and sewerage companies, highways bodies and any others that they consider necessary to deliver a joined up management of local flood risk in their areas;
- produce flood risk assessments and flood risk action plans (e.g. Surface Water Management Plans) for their areas. These should be consistent with the Environment Agency strategies and any supplementary guidance use any existing relevant work and such as Strategic Flood Risk Assessments. In part this will deliver the EU floods Directive.

The draft Bill places a duty on district councils to act in a manner which is consistent with the county level strategy and any supplementary guidance issued.

3. Work Programmes:

County councils will have to develop local flood risk management work programmes (including works which they themselves intend to undertake or works which they consider that other bodies, for example district councils, should undertake or works with other bodies are responsible for including water companies and the Environment Agency) for example within Surface Water Management Plans (SWMPs).

In addition county councils will identify other bodies whose assets may be an important part of the effective management of flood risk or which may be contributing to flood risk and create an asset register of information on the ownership, location and, where available, the condition of those assets in the area; and investigate local flooding incidents with all relevant parties to identify the source of the problem and where responsibility lies for addressing it. Clearly a great deal of this role will depend upon working with and possibly through the district councils.

4. Planning Control:

Elements of planning or subsequent work could be delegated from county to the district councils (using the 'arrangements' clauses in the draft Bill) but responsibility for the strategy would remain with county councils.

District and county councils will have an increasing role in local flood risk management and ensuring that this is linked to the spatial planning process. County councils will lead in ensuring the production of Strategic Flood Risk Assessments (SFRAs) covering all forms of flood risk, which will:

- provide the evidence to allow local planning authorities to factor flood risk into local development plans and individual decisions on new development proposals;
- help county councils to determine where they need to develop a surface water management plan for local flood risk management;
- provide the evidence to allow local planning authorities to factor flood risk into local development plans and individual decisions on new development proposals; and
- help county councils to determine where they need to develop a surface water management plan for local flood risk management.

Local authorities will be able to meet both the requirements of the planning system, as set out in PPS25 and its Practice Guide, and Directive PFRAs by completing their level one Strategic Flood Risk Assessments (SFRAs). Level one SFRAs will cover all forms of flooding. In two tier areas, district councils will work with the county council to produce a SFRA that sets out flood risk across the county area. This will underpin the planning system and guide the location of future development to avoid and minimise flood risk whilst also meeting the requirements of the Floods Directive.

5. Other District Council Responsibilities:

District councils have responsibility for open spaces and parks and often roads, verges, housing and public buildings. They are often active in managing the local flood risk from ordinary watercourses. The potential impacts of council activities on flood risk will have to be considered.

The district councils will maintain their current role in relation to the ordinary watercourse network in terms of works and maintenance, apart from a proposed consenting role.

County councils may, while remaining accountable for the overall quality of service, also want to use the expertise and capacity that exists in district councils to help fulfil their new functions, including for example preparing Surface Water Management Plans. To this end, the draft Bill provides powers for all relevant organisations to undertake flood risk management functions at the request of another, and on terms (including payment) which may be agreed between them.

6. Sustainable Urban Drainage Schemes (SUDS)

The Bill will require developers to include sustainable drainage, where practicable, in new developments, built to standards which reduce flood damage and improve water quality. It will also amend section 106 of the Water Industry Act 1991 to make the right to connect surface water run-off to public sewers conditional on meeting the new standards. It will give responsibility for approving sustainable drainage systems in new development, and adopting and maintaining them where they affect more than one property, to a SUDS approving body, generally county councils.

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