

Wiltshire Council

Council

4 February 2014

Subject: Drainage Byelaws

Cabinet Member: Councillor Jonathon Seed – Cabinet Member for Communities, Campuses, Area Boards, Leisure, Libraries and Flooding

Key Decision: Yes

Executive Summary

The Flood and Water Management Act 2010 amended Section 66 of the Land Drainage Act 1991 to allow local authorities to make land drainage byelaws. These byelaws also create criminal offences which can be prosecuted in the Magistrates' Courts. The Council is now intending to use its powers to make these byelaws to help it carry out its duties effectively and in doing so assist with reducing of flood risk for local communities.

The proposed byelaws for Wiltshire (see **Appendix 1**) are based on the Department for Environment, Food and Rural Affairs (Defra) set of model Land Drainage Byelaws, which are broadly similar to the byelaws which have been used for many years by the Environment Agency. They cover matters such as changes to flows in watercourses, obstructions, vegetation, damage to river banks and other issues which will be of help to the Council in carrying out its duties as Highway and Lead Local Flood Authority.

Proposals

That Council should:

- (i) Make the proposed drainage byelaws as included as **Appendix 1** of the report, and carry out the formal consultations.
- (ii) Subject to the outcome of the formal consultations, request the Secretary of State to confirm the drainage byelaws.

Reason for Proposals

The proposed land drainage byelaws, which if made and confirmed following the formal consultation process, will assist the Council in carrying out its duties as Highway and Lead Local Flood Authority under the Flood and Water Management Act 2010.

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Wiltshire Council

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Key Decision: Yes

Purpose of Report

1. To agree to make byelaws in connection with drainage matters to assist the Council in reducing the flood risk for local communities.

Relevance to the Council's Business Plan

2. The making of drainage byelaws would help protect communities, especially those who are most vulnerable, from flooding. They will provide scope for the Council to work with local communities to reduce flood risk, and help empower communities to do more for themselves. Flooding can have serious consequences for communities and businesses affected, and can cause serious disruption to transport links. The proposed byelaws will help the Council deliver its Business Plan and create stronger and more resilient communities.

Background

3. Flooding is a serious issue in Wiltshire, as has been demonstrated by recent events. In recent years the Council has been required to respond to a number of significant flooding events which have seriously affected a number of communities. The Council through the Local Resilience Forum works closely with other agencies to respond to major events. The Council's Operational Flood Working Groups work with local councils and communities to reduce flood risk across the county.
4. Following the major floods in 2007, the Government set up the Pitt Review which led to the Flood and Water Management Act 2010 (The '2010' Act), which transferred ordinary watercourse regulation powers from the Environment agency to Lead Local Flood Authorities. The 2010 Act amended section 66 of the Land Drainage Act 1991 and gave local authorities the power to make land drainage byelaws for the purpose of preventing flooding or remedying or mitigating any damage caused by flooding. These byelaws also create criminal offences which can be prosecuted in the Magistrates' Courts. The Council is now intending to use its powers to make these byelaws to help it carry out its duties effectively and in doing so assist with reducing of flood risk for local communities.

Main Considerations for the Council

Proposed Byelaws

5. The Flood and Water Management Act 2010 allows local authorities to make byelaws for the following purposes:
 - To secure the efficient working of a drainage system in the local authority's area.
 - To regulate the effects of a drainage system on the environment.
 - To secure the effectiveness of flood risk management work.
 - To secure the effectiveness of works done in reliance on section 38 – 39 of the 2010 Act concerning incidental flooding

6. The proposed byelaws for Wiltshire (see **Appendix 1**) are based on the Department for Environment, Food and Rural Affairs (Defra) set of model land drainage byelaws, which are broadly similar to the byelaws which have been used for many years by the Environment Agency. They cover matters such as changes to flows in watercourses, obstructions, vegetation, damage to river banks and other issues which will be of help to the Council in carrying out its duties as Highway and Lead Local Flood Authority.

7. There are a number of stages to the process of making the byelaws which are set out below:
 - (i) The proposed draft byelaws are forwarded to Defra.
 - (ii) Formal consultation takes place with Natural England and the local navigational authority (in Wiltshire the Canal and River Trust). The Council has also chosen to informally consult with Parish and Town Councils through the Parish Newsletter before the proposed byelaws are considered by the Council.
 - (iii) Having considered any responses received to both the formal and informal consultations, the Council needs to take a decision as to whether or not to make the byelaws. Under the Council's constitution this decision is reserved to Full Council.
 - (iv) If the Council decides to make the byelaws a formal (statutory) consultation takes place where the byelaws are made, sealed and deposited for one month. If any objections are received, the Council will be expected, where possible, to resolve the objections before the byelaws and any unresolved objections are forwarded to the Secretary of State for confirmation. The byelaws cannot come into operation until they are confirmed by the Secretary of State.
 - (v) Confirmation by the Secretary of State where the byelaws will, unless otherwise decided, come into operation at the expiration of one month from the day on which they are confirmed by the Secretary of State.

Response to initial Consultations

8. The draft byelaws were forwarded to Defra, and no objection has been raised as the draft byelaws follow the Defra model.
9. Natural England did comment on the proposed byelaws, requesting some assurance that the proposed byelaws provide safeguards where they might conflict with the conservation and enhancement of Sites of Special Scientific Interest (SSSI), including consent or assent requirements under the Wildlife and Countryside Act 1981 (as amended), and licensing requirements for species protected under the 1981 Act and/or the Habitats Regulations (see **Appendix 2**).
10. Following further discussions with Natural England and Defra it has been agreed that Natural England's concerns can be addressed by incorporating requirements to obtain the consent from Natural England within the Council's own procedures where any proposed action under the byelaws is likely to take place in areas of interest to Natural England, such as SSSI.
11. The proposed drainage byelaws were publicised in the Council's Parish Newsletter and through the Area Boards. The draft byelaws were available to be viewed on the Council's website, which allowed comments to be made. The deadline for responses to the informal consultation was 10 December 2013. Consultees were informed that they should advise the Council if they also wished for their comments to be considered as part of the formal consultations which is anticipated will take place in spring 2014. To date no objections to the proposed byelaws have been received.
12. The proposed byelaws were considered by the Environment Select Committee at its meeting on 10 December 2013. In the discussion the Committee considered the need to focus on flood prevention, and potential financial implications for Wiltshire Council as a result of the byelaws, along with issues in relation to development within eight metres of a watercourse, and the contacting of landowners regarding flood management schemes. It was noted that byelaws act as an additional tool for the Council and that co-operation with local people was needed.
13. After discussion, the Environment Select Committee resolved to note the intention of the Council to make the proposed byelaws, which will assist the Council in carrying out its duties as Lead Local Flood Authority under the Flood and Water Management Act 2010.
14. A number of questions, observations and general comments about drainage were made by the public and at the Environment Select Committee and these have been summarised in **Appendix 3**.

Next Stages

15. The next stage, should the Council resolve to make the byelaws, is to hold a formal (statutory) public consultation. The byelaws are then made, sealed and deposited for one month.
16. If any objections are received, the Council will be expected, where possible, to resolve the objections before the byelaws and any unresolved objections are forwarded to the Secretary of State for confirmation. It should be noted that the

byelaws cannot come into operation until they are confirmed by the Secretary of State.

Safeguarding Implications

17. There are no safeguarding implications.

Public Health Implications

18. The proposed drainage byelaws could potentially reduce flood risk for some properties, which would have benefits for those residents.

Environmental and Climate Change Considerations

19. Extreme weather events are forecast to become more frequent in Wiltshire due to climate change, and these have serious implications for the Council as Lead Local Flood Authority. The introduction of the proposed byelaws will help the Council carry out its duties and reduce flood risk for communities in Wiltshire as part of the council's actions to adapt to climate change.

Equalities Impact of the Proposal

20. There are considered to be no equalities impacts in connection with making the proposed byelaws.

Risk Assessment

21. There are anticipated to be no significant risks attached to making of the proposed byelaws. However, there is a possibility of incurring legal costs in connection with the byelaws. If the byelaws are not made it may prove difficult for the Council to adequately manage flood risk in the future.

Financial Implications

22. There are not anticipated to be any immediate and significant financial implications arising from the making of the byelaws because they will assist the Council in carrying out its duties as Lead Local Flood Authority for Wiltshire.
23. There is a potential for legal costs to arise as a result of any future prosecution under the proposed byelaws. At this stage this is an unknown quantity, but is a factor that would need to be monitored and managed if the byelaws are adopted.

Legal Implications

24. The byelaws are a form of 'delegated legislation' whose operation is usually restricted in order to control or regulate activities in certain places. The enforcement of the proposed land drainage byelaws will be undertaken for the purpose of securing appropriate management of flood risk in Wiltshire. The byelaws are made under the Flood and Water Management Act 2010, Land Drainage Act 1991 and the Local Government Act 1972. Section 236 of the Local Government Act 1972 sets out the legal requirements for making byelaws.

25. The byelaws will also create criminal offences which can be prosecuted in the Magistrates' Courts. Any person who acts in contravention or fails to comply with the proposed byelaws will be potentially guilty of a criminal offence punishable in the Magistrate's Court by way of a fine. The new byelaws are expected to help ensure the Council meets its obligations under the Flood and Water Management Act 2010, Land Drainage Act 1991 and Highways Act 1980 and any other relevant legislation concerned with land and highway drainage.

Options Considered

26. The making of the byelaws would help the Council to carry out its duties effectively and would assist with reducing of flood risk for local communities. Not making the byelaws would make it difficult to take action to reduce flood risk in some circumstances. The proposed byelaws follow the Defra model byelaws and are considered to be appropriate.

Conclusions

27. The proposed land drainage byelaws are considered to be essential for the regulation, management and enforcement of the Council's local flood risk management strategy and, which if made and confirmed following the formal consultation process, will assist the Council in carrying out its duties as Highway and Lead Local Flood Authority under the Flood and Water Management Act 2010.

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The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix 1 – Draft Byelaws

Appendix 2 – Consultation response from Natural England

Appendix 3 – Comments received on Byelaws

