

REPORT TO: Environment and Urban Renewal
Policy and Performance Board

DATE: 21st November 2012

REPORTING OFFICER: Strategic Director Policy and Resources

PORTFOLIO: Transportation

SUBJECT: Land Drainage Act – Watercourse
Regulation and Byelaws

WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

- 1.1 To inform the Board about recent changes to the Council's regulatory powers under the Land Drainage Act 1991 (as amended by the Flood and Water Management Act 2010) and to seek its endorsement to the proposal to consult on a set of local land drainage byelaws.
- 1.2 To consider a policy for the regulation of ordinary watercourses.

2.0 RECOMMENDATION: That

- 1. the Board notes the changes to the Council's regulatory Powers under the Land Drainage Act (1991);**
- 2. the Board supports the proposals set out in the report for the regulation of ordinary watercourses; and**
- 3. a report on the adoption of byelaws, be submitted to the Executive Board.**

3.0 SUPPORTING INFORMATION

Background

- 3.1 On 6th April 2012, under the provisions of the Flood and Water Management Act 2010 (F&WMA), amendments to the Land Drainage Act (LDA) were enacted, which transferred certain powers in relation to the regulation of watercourses, from the Environment Agency (EA) to Halton Council as Lead Local Flood Authority for the area. As a consequence, the Council became responsible for consenting certain works, and for the enforcement of unsatisfactory or un-consented works on Ordinary Watercourses.
- 3.2 An Ordinary Watercourse is a watercourse (eg. a stream, ditch, drain culvert etc.) that is not part of a Main River (these are usually the larger, arterial watercourses) which come under the jurisdiction of the EA.

Within Halton, Main Rivers include: Ditton Brook (and its tributaries); Rams Brook; Keckwick Brook; Bowers Brook and sections of Stewards Brook. All other watercourses within Halton now come under the Council's jurisdiction for consenting and enforcement purposes.

- 3.3 The purpose of ordinary watercourse regulation is to control certain activities that might result in flooding or increase flood risk.

Consenting Duty and Enforcement Powers

- 3.4 'Consenting' is the process whereby landowners or occupiers may apply to the regulatory body to undertake works within or close to a watercourse. The Environment Agency has produced guidance for applicants on the type of works or activities that are considered to require formal Consent, and has applied these assessment criteria over a period of time, such that land owners and developers are familiar with the 'rules' applied by the EA.
- 3.5 The range of works is illustrated as typical cross-sections, shown in Appendix A. It is proposed that for the purposes of regulating works on ordinary watercourses, the Council adopt the same approach as that used by the EA.
- 3.6 The same criteria would be used to assess works to ordinary watercourses that have been undertaken without consent, and whether the Council should consider enforcement action in those cases.
- 3.7 Generally, it is the more rural areas which tend to generate the most applications for consent. Historically, there have been a very low number of consent applications from within the Borough to the EA. According to their records, no applications were received by them in 2010/11. Therefore, it is not envisaged that the new duty will impose a significant demand on our existing resources.
- 3.8 The Environment Agency has adopted a proportionate and risk-based approach in relation to watercourse regulation, and it is expected that they will continue to do so in relation to Main River regulation. Partner authorities of the Cheshire & Mid Mersey Flood Risk Management Group have agreed that a similar, and consistent, sub-regional approach should be applied, as this will provide clarity for prospective applicants, developers and land owners.
- 3.9 A suite of documents comprising letter and notice templates, to be used in connection with ordinary watercourse regulation has been produced by the EA for adaptation and use by Lead Local Flood Authorities and these have been adopted for use within Halton.
- 3.10 A fee is payable by applicants for watercourse consent. The F&WMA amends the Land Drainage Act (LDA) to determine the fee in

accordance with a “prescribed charging scheme”. Currently, the fee for applications for consent is £50.

3.11 The Council also has enforcement powers under the LDA for ordinary watercourses. Enforcement action may be taken where damaging (or potentially damaging) works have been carried out without consent, or the works are in contravention to a consent that has been issued. As outlined in paragraph 3.5, the range of works described in Appendix A would be used to assess acceptability.

3.12 Due to current resource and budgetary constraints, there are no plans at present to undertake routine regular inspections of ordinary watercourses within the Borough. Any enforcement action undertaken would therefore generally only be considered when:

- Works have been carried out in relation to a watercourse, that are not in accordance with a granted consent; or
- The Council becomes aware of contraventions to the Land Drainage Act as a result of other surveys and inspections or through notification or information provided by third parties.

Land Drainage Byelaws

3.13 Additionally, the Flood and Water Management Act amends Section 66 of the Land Drainage Act to allow local authorities to make byelaws for the following purposes:

- To secure the efficient working of a drainage system in its area;
- To regulate the effects of a drainage system on the environment;
- To secure the effectiveness of flood risk management work (carried out under either the Land Drainage Act or the Flood and Water Management Act)

3.14 In preparation for the transfer of duties and powers described above, Defra have prepared a set of Model Land Drainage Byelaws and have issued guidance for Local Authorities on making byelaws under Section 66 (LDA). The byelaws are broadly similar to those operated for many years by the Environment Agency and are appended as Appendix B to this report.

3.15 Partner members of the Cheshire and Mid Mersey Flood Risk Management Group have considered the model byelaws and have agreed that they would be a very useful tool across the partnership region for regulation of ordinary watercourses. The making of Byelaws is not mandatory but it is seen as a key element at a tactical level to deliver flood risk management. Without byelaws, the application of the consenting and enforcing powers and duties will be very difficult.

3.16 The model byelaws contain (inter-alia) provisions to control a range of factors that might affect (or have the potential to affect) the flow of water in a watercourse and therefore may impact on flood risk, such as:

- The introduction and control of flow into and within watercourses;
- Alterations to watercourses;
- Activities within and close to the banks of watercourses;
- Damage and obstruction to watercourses, and associated structures and property.

4.0 POLICY IMPLICATIONS

- 4.1 The EA's policies and practices for watercourse regulation as described in paragraph 3.8 have been adopted by Halton for the consenting and enforcement of works relating to watercourses. The suite of documents referred to in paragraph 3.9 has been drafted for use for applications for works within Halton.
- 4.2 The procedure for making byelaws is outlined in section 236 of the Local Government Act 1972. Also, Defra has published guidance for local authorities on making byelaws under section 66 of the Land Drainage Act 1991. They recommend an early consultation with Defra on the draft documents, however as the adoption of the 'Model' byelaws is proposed, this should be a formality. There is then a need to consult initially with the canal and river navigation authorities (to avoid conflict or interference with their byelaws) and Natural England.

Subject to the Board's endorsement, it is recommended that a report on the adoption of land drainage byelaws for the Borough of Halton be presented to Executive Board.

Under the Council's Constitution "making and amending bye-laws" is reserved to full Council. Objections to the proposed byelaws are considered by and dealt with by the Council. Ideally, any objections will be resolved and withdrawn before the byelaws are submitted to the appropriate Minister within Defra for confirmation.

5.0 OTHER IMPLICATIONS

5.1 Resource Implications

Applications for consent for works undertaken in relation to ordinary watercourses are subject to a fee, currently £50. This level of fee is unlikely to cover the actual costs incurred by the Council in processing an application. It should be noted that (i) in future, fees may be determined in accordance with a charging scheme (prescribed by order) and (ii) historically, the number of applications submitted in relation to works within Halton has been low. It is anticipated that the workload associated with applications for watercourse consent can, at present, be managed within current staffing resources.

As stated in paragraph 3.12, due to existing budgetary constraints and staff resource issues, there are no plans at present to undertake routine

regular inspections of ordinary watercourses. The workload associated with enforcement powers will be restricted typically to the circumstances described in 3.12.

5.2 Sustainability Checklist

The regulation of works to ordinary watercourses is a key consideration in the sustainable development of new sites and in the regeneration of existing sites across the Borough. The use of sustainable drainage techniques, including surface water collection, treatment and run-off to watercourses, and the adoption of such systems in the future is a key duty under the F&WMA legislation.

5.3 Legal Implications

The Environment Agency has provided guidance to local authorities on applying sanctions in relation to the regulation of ordinary watercourses. Notices may be served to deal with the repair, removal of obstruction and maintenance of flow in watercourses. An offence is committed under the Land Drainage Act 1991 by failure to comply with a notice and not by the deed itself. Failure to comply with notices served under Section 24 (abatement/removal of un-consented works from ordinary watercourses) and Section 25 (Requiring works to maintain flow of an impeded ordinary watercourse) of the Land Drainage Act may result in legal action being taken through the Magistrates Courts.

Byelaws also create criminal offences which can be prosecuted in Magistrates Courts. Breaches of byelaws can lead to a fine, the maximum being generally between £500 and £2,500.

5.4 Community Impact Review & Assessment (CIRA)

Based upon the principal aims of watercourse regulation contained in the amendments to the Land Drainage Act and the proposed byelaws, the potential impact of the policies and practices are judged to be neutral and low across all equality strands. Therefore, a CIRA is not required in this instance.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

There are no implications for Halton's Children and Young People priority.

6.2 A Healthy Halton

There are no implications for Halton's health priority.

6.3 Employment, Learning and Skills in Halton

There are no implications for Halton's Employment, Learning and Skills priority.

6.4 A Safer Halton

Local regulation of watercourses through the revisions to the Land Drainage Act and by the adoption of proposed byelaws will enable the Council to maintain safe and secure environments around ordinary watercourses and to manage flood risk across the Borough.

6.4 Children and Young People in Halton

There are no implications for Halton's Children and Young People priority.

6.5 Environment and Regeneration in Halton

Local regulation of watercourses through the revisions to the Land Drainage Act and by the adoption of proposed byelaws will enable the Council to maintain a high quality and sustainable environment, and protect and enhance key areas and public spaces around ordinary watercourses. The procedures will help to support the planning and development process, protecting the physical and natural environment as sites are brought forward for development and regeneration.

6.6 Corporate effectiveness and business efficiency

The application of the Environment Agency's existing policies and practices, and the adoption of the model set of byelaws in relation to watercourse regulation across the Cheshire and Mid Mersey sub-region, will enable effective and consistent management of watercourse regulation.

7.0 EQUALITY AND DIVERSITY ISSUES

There are no equality and diversity issues arising from the report.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

| Document | Place of Inspection | Contact Officer |
|---|---|------------------------|
| Land Drainage Act 1991 | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |
| Flood and Water Management Act 2010 | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |
| EA Advice Note and Appendix Ordinary Watercourse Regulation February 2012 | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |
| Letter and Notice templates for watercourse regulation in Halton | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |
| Halton Borough Council Consents (EA Spread sheet) | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |
| Cheshire and Mid Mersey Flood Risk Management Sub Regional Group – minutes of meetings. | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |
| Defra Guidance for Local Authorities on making byelaws under section 66 of the Land Drainage Act 1991 | HBC Highways Offices Rutland House, Runcorn | Dave Cunliffe |