

### Land Drainage Byelaws – Principal Engineer (Prince Frank)

#### **Synopsis of report:**

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 update its existing 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 Runnymede (see Appendix B) 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 with regards to land drainage enforcement.

#### **The Committee is asked to endorse the approach for recommendation to Full Council for:**

- i) the proposal to update the drainage byelaws, as set out in Appendix A to the report, be endorsed;
- ii) the Council consult with Defra, Natural England and the local navigation authority on the Council's proposal to make the drainage byelaws;
- iii) subject to there being no objections by Defra, Natural England and the local navigation authority to the informal consultation the byelaws be made;
- iv) the Head of Environmental Services in consultation with the Principal Engineer, be authorised to consider and seek to resolve any objection to the said byelaws being made (including amending the proposed byelaws);
- v) the byelaws be submitted to the Secretary of State for confirmation with or without any outstanding objections (as the case may be); and
- vi) in the event these byelaws are adopted by the Council, authority be delegated to the Principal Engineer to:
  - a) authorise or refuse any applications for consents submitted under the said byelaws.
  - b) serve enforcement notices for contraventions of the said byelaws.

#### **1. Context and background of report**

- 1.1 The existing Runnymede Borough Council Land Drainage Byelaws 1984 were made under Section 34 of the Land Drainage Act 1976 and they still refer to this Act.

- 1.2 Section 34 of The Land Drainage Act 1976 which gave Runnymede powers to create the Land Drainage Byelaws 1984 was repealed by the Water Consolidation Act 1991 and then superseded by the Land Drainage Act 1991. Although the existing byelaws remain in force the legislation that they refer to is not, and therefore there would be no legal basis to bring a prosecution.
- 1.3 Section 66 of the Land Drainage Act 1991, gives 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 create criminal offences that can be prosecuted in the Magistrates' Courts if contravened.
- 1.4 The Act allows 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.
- 1.5 The making of Byelaws is not mandatory, but it is seen as a key element at a tactical level to deliver flood risk management and improve understanding and transparency of the Council's requirements and expectations concerning drainage on new development.
- 1.6 Per the House of Commons Library briefing paper (2016) the use of byelaws has been described as follows:

*'Byelaws generally require something to be done – or not to be done – in a particular location. They are accompanied by a sanction or penalty for non-observance. If validly made, byelaws have the force of law within the areas to which they apply. Offences against byelaws attract a penalty fine.'*

## **2. Report and, where applicable, options considered and recommended**

- 2.1 The proposed byelaws for Runnymede Borough Council are based on the '[Model Land Drainage Byelaws for Local Authorities](#)' produced by the Department for Environment, Food and Rural Affairs (DEFRA).
- 2.2 The use of the model byelaws is not compulsory but will help to ensure that byelaws introduced by a local authority are correctly worded and are within the authority's powers, thus reducing the risk of legal challenge in the future.
- 2.3 The model byelaws explicitly support the themes of [Surrey County Council's Local Flood Risk Management Strategy \(March 2017\)](#), which the Council agreed to in December 2016. They cover matters such as mitigating against disruptions to natural flows in watercourses, obstructions, vegetation control, damage to the bed or bank of a watercourse, access to drainage features for maintenance and other issues that are considered a risk to the water environment. Several other local authorities have already adopted these across the country for flood management purposes.
- 2.4 There are several stages to the process of making the byelaws which are set out below:
- i. The proposed draft byelaws are forwarded to Defra for comment.

- ii. Early consultation with Natural England and the local navigational authority takes place to ensure that the proposed byelaw does not conflict with or interfere with the operation of any of their byelaws.
- iii. Subject to no objections being received from the early consultation, the Council shall make the proposed byelaws. Under the Council's constitution this decision is reserved to Full Council.
- iv. The Council shall make the byelaws and ensure that they are advertised in one or more newspapers circulating in the area affected. A copy shall also be held in reception and placed on the Council's website. The Council must allow one month for submission of any objection to the proposed byelaws. 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.

## **2.1 Enforcement of the proposed Byelaws**

- 2.2 Due to current resource and budgetary constraints, there are no plans at present to undertake routine regular inspections of all ordinary watercourses in Runnymede. Byelaw contraventions will therefore come to light because of problems arising, third party reports or from other routine inspections or surveys.
- 2.3 Where breach of a byelaw is discovered or suspected by the Council, the Officers will conduct an investigation. If there is evidence of a breach then enforcement action will be considered.
- 2.4 It is proposed that a proportionate, risk-based approach to the enforcement of the byelaws is taken by the Council, considering the location and nature of any breach. This will ensure drainage issues can be rectified without the need for formal action and will ensure efficient use of the Council's resources .

### Enforcement Actions

- 2.5 The aims of enforcement in flood risk management are to ensure the proper flow of water in a watercourse and over the floodplain, the control of water levels and the security of existing assets. To achieve these aims, enforcement action is used to rectify unlawful and damaging or potentially damaging work, always using a risk-based approach.
- 2.6 Enforcement action (including criminal litigation where appropriate) may be taken where damaging or potentially damaging works have been undertaken without consent or are in contravention to an issued consent where there is a lack of cooperation by the owner of the land.
- 2.7 Some incidents are so serious that immediate action is required to mitigate the risk. Other incidents may only require a letter to the offender so that the requirements are clear.

Methods of undertaking enforcement include:

- site visits and face to face meetings with perpetrator and or land owner / occupier;
- sending advisory letters;
- sending warning letters;
- using notices to enforce, prohibit or carry out works;
- prosecution and reclaiming costs of prosecution; and
- direct remedial action plus recharge of costs of remedial action.

- 2.8 Where enforcement action is pursued, the Council may serve notice under Section 66 (6) of the Land Drainage Act 1991, requiring any contravention of the proposed byelaws to be remedied within a period not exceeding 28 days. If the breach was not remedied within the specified time scale, the Council could use Section 66 (7) of the Land Drainage Act 1991 to undertake the necessary works and recharge the costs of such works to the offender.
- 2.9 For activities specified by byelaws, consent would be required and the activity cannot be undertaken until the consent has been issued.
- 2.10 Consenting' is the process whereby landowners or occupiers may apply to the regulatory body to undertake works within or close to a watercourse.
- 2.11 A fee is payable by applicants for watercourse consent. The Land Drainage Act 1991 (LDA) determines the fee in accordance with a "prescribed charging scheme". We would propose the fee for applications for consent is £150 per structure within or close to a watercourse.

### **3. Policy framework implications**

- 3.1 The existing Runnymede Borough Council Land Drainage Byelaws 1984 were made under Section 34 of the Land Drainage Act 1976 and they still refer to this Act.

Section 34 of The Land Drainage Act 1976 which gave Runnymede powers to create the Land Drainage Byelaws 1984 was repealed by the Water Consolidation Act 1991 and then superseded by the Land Drainage Act 1991. Although the existing byelaws remain in force the legislation that they refer to is not, and therefore there would be no legal basis to bring a prosecution.

- 3.2 Section 66 of the Land Drainage Act 1991, gives 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 create criminal offences that can be prosecuted in the Magistrates' Courts if contravened.

### **4. Resource implications/Value for Money (where applicable)**

#### Financial

- 4.1 It is not anticipated that there will be any immediate or significant financial implications arising from the making of the byelaws. The costs associated with the implementation of Adoption of Ordinary Watercourse Byelaws are principally administrative, comprising Officer time in managing the process (e.g. consultation and liaison, reporting, making, advertising and dealing with objections etc.) and sundry costs (printing, postage, newspaper advertising etc.).

- 4.2 Local land drainage byelaws are principally administrative, comprising Officer time in managing the process (e.g. consultation and liaison, reporting, making, advertising and dealing with objections etc.) and sundry costs (printing, postage, newspaper advertising etc.).
- 4.3 Where enforcement of the byelaws would require the construction or remediation of drainage infrastructure, the financial implication of this would be with the responsible party/land owner and not the Council. Breaches of land drainage byelaws can lead to a fine, the maximum being generally between £500 and £2,500.
- 4.4 A fee is payable by applicants for watercourse consent. The LDA determines the fee in accordance with a “prescribed charging scheme”. The fee for applications for consent is proposed as £150 per structure.

#### Human Resource/Training and Development

- 4.4 Applications for consent for works undertaken in relation to ordinary watercourses will be subject to a fee, proposed as £150. This level of fee is unlikely to cover the actual costs incurred by the Council in processing an application. It is anticipated that the workload associated with applications for watercourse consent can, at present, be managed within current staffing resources.
- 4.5 As stated in paragraph 2.6, due to existing budgetary constraints and staff resource issues, there are no plans at present to undertake routine regular inspections of all ordinary watercourses. The workload associated with enforcement powers will be restricted typically to the circumstances described in paragraph 2.11.

#### **5. Legal implications**

- 5.1 The byelaws are a form of delegated legislation whose operation is usually restricted 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 Runnymede. The Byelaws are made under the Flood and Water Management Act 2010, Land Act 1991 and the Local Government Act 1972. Section 236 of the Local Government Act 1972 sets out the legal requirements for making byelaws.
- 5.2 The byelaws will also create criminal offences which can be prosecuted in the Magistrates’ Courts by way of a fine.

#### **6. Equality implications**

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

#### **7. Environmental implications**

- 6.1 The drainage byelaws will help conserve and enhance the area’s local character, biodiversity, and habitats, by contributing to a healthier environment with reduced pollution and contamination.
- 6.2 Extreme weather events are forecast to become more frequent and severe in the UK due to the effects of climate change. We are already seeing increasing numbers of heavy rainfall events, and expect this increase to continue, with greater risk of river and flash flooding. The introduction of the proposed byelaws will reduce flood risk for local communities and assist the Council in being better prepared for the impacts of a

changing climate. In doing so, they would contribute to the delivery of the Council's vision and strategic aims to mitigate and adapt to climate change, as set out in its 'Climate Change Strategy'.

## **8. Other implications (where applicable)**

### Risk Management

- 6.3 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 LDA 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 LDA may result in legal action being taken through the Magistrates' Courts.
- 6.4 Byelaws also create criminal offences which can be prosecuted in the Magistrates' Court. Breaches of byelaws can lead to a fine, the maximum being generally between £500 and £2,500.

### Community Safety

- 6.5 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.

## **9. Timetable for Implementation**

None

## **10. Conclusions**

- 10.1 The proposed byelaws will assist the Council in carrying out its duties to reduce localised flood risk. The making of Byelaws is not mandatory, but it is seen as a key element at a tactical level to deliver flood risk management and improve understanding and transparency of the Council's requirements and expectations concerning land drainage. Without the byelaws, the application of the consenting and enforcing powers and duties is difficult.