

WEST NORTHAMPTONSHIRE COUNCIL CABINET

16 APRIL 2024

**CABINET MEMBER FOR ENVIRONMENT, TRANSPORT, HIGHWAYS & WASTE
– COUNCILLOR PHIL LARRATT**

Report Title Proposed Drainage Byelaws for Flood Risk Management

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List of Approvers

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List of Appendices

Appendix A – Proposed Land Drainage Byelaws

1. Purpose of Report

- 1.1 To agree to make byelaws in connection with drainage matters to assist the Council in meeting its statutory duties and in its role to help reduce the risk of flooding for local communities.

2. Executive Summary

- 1.2 It is proposed that the Council uses its powers under the Land Drainage Act 1991 to put in place local drainage byelaws to help it execute its powers and duties effectively and in doing so assist in reducing flood risk for local communities.

- 1.3 The making of byelaws is a policy matter reserved by law to full Council. This report seeks authorisation to begin the process of byelaw making by carrying out a consultation exercise. Following a formal consultation period, the Council will take the decision whether or not to make the byelaws.

- 1.4 The primary purpose of these byelaws is to ensure efficient drainage within the Council's area. The associated benefits of making the proposed byelaws are outlined throughout this report but can be summarised as follows:

- Managing and reducing flood risk.
- Improving water quality.
- Improving biodiversity.
- Ensuring drainage infrastructure will be maintained and adapted over time.
- Improving the quality of life for people by improving the quality of public spaces and the water environment.

- 1.5 The proposed byelaws relate to ordinary watercourses, these are watercourses which do not come within the category of 'main river'. Main rivers remain the responsibility of the Environment Agency and are subject to separate byelaws.

3. Recommendations

- 3.1 That the Cabinet approves the principle of making the land drainage byelaws as set out in Appendix A.

4. Reason for Recommendations

- 4.1 To support the ability of the Council to manage adverse effects of flood risk on people, businesses, and the environment.
- 4.2 To enable more efficient and effective discharge of the Council's duties and powers as lead local flood authority (LLFA) and land drainage authority.

5. Report Background

- 5.1 Under the Flood and Water Management Act in 2010, the Council is designated as a lead local flood authority (LLFA) and given statutory duties to manage the risk of flooding from surface water runoff, groundwater, and ordinary watercourses (all watercourses which are not designated by the Environment Agency as 'main river'). The Land Drainage Act 1991 gives the Council responsibility for regulating (consenting and enforcing) works that could directly affect the flow of water in ordinary watercourses. Consequently, riparian owners (owners of land adjacent to watercourses) and developers must obtain a land drainage consent from the Council before any such work is undertaken. However, this provision only accommodates works within the watercourse, and alone therefore does not fully enable the Council to adequately regulate works which could cause a risk of flooding, such as installation of obstructions within the floodplain of a watercourse.
- 5.2 The Council has the power to make land drainage byelaws for the purpose of preventing flooding, remedying, or mitigating any damage caused by flooding. These byelaws create criminal offences that can be prosecuted in the magistrates' courts if contravened. The introduction of byelaws would allow the Council to control all activities within nine metres of ordinary watercourses.
- 5.3 At present, the Bedford Group of Drainage Boards carries out the land drainage consent process on behalf of the Council under a Service Level Agreement. Bedford Group of Drainage Boards has its own set of land drainage byelaws which it applies to the consenting process. The current agreement with Bedford Group of Drainage Boards expires on the 31st March 2024. Upon successful recruitment of the Council's Flood & Water Team it is intended that this service will then be brought in-house.
- 5.4 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 also improve understanding and transparency of the Council's requirements and expectations concerning drainage on new development.

6. Issues and Choices

The Proposed Byelaws

- 6.1 The proposed byelaws for West Northamptonshire Council are based on the 'Model Land Drainage Byelaws for Local Authorities' produced by the Department for Environment, Food and Rural Affairs (DEFRA).
- 6.2 The model byelaws cover matters such as flows in watercourses, obstructions, vegetation control, damage to the bed or bank of a watercourse, access for maintenance and other issues that are considered a detriment to the environment. The majority of other local authorities across the country have already adopted these for flood management purposes.
- 6.3 It is proposed that the byelaws for West Northamptonshire mirror those already in use by the Bedford Group of Drainage Boards, for the purpose of continuity. For example, it is proposed that byelaw 10 states an easement distance of nine metres from the banks of the watercourse. This

is in order to control the erection of any building or structure within this distance from a watercourse and ensure there is adequate access to the watercourse for future maintenance (see byelaw 10 in Appendix A). Additionally, the Bedford Group of Drainage Boards created Byelaw 18 'Protection of the Flood Plain' which is not included in the model land drainage byelaws. It is proposed this byelaw is included in West Northamptonshire Council's Land Drainage Byelaws to allow the Council to protect the flood plain extending past nine metres from the bank.

Enforcement of the Proposed Byelaws

Due to current resource and budgetary constraints, there are no plans at present to undertake routine regular inspections of ordinary watercourses within West Northamptonshire. Byelaw contraventions will therefore come to light as a result of problems arising, third party reports or from other routine inspections or surveys.

- 6.4 Where breach of a byelaw is discovered or suspected the Council, the officers may conduct an investigation. If there is evidence of a breach, then enforcement action may be taken.
- 6.5 Enforcement powers are permissive, and therefore discretionary. It is expected that the Council would not pursue legal action unless there is evidence of a significant drainage problem and enforcement was necessary to secure a remedy. However, where a person was repeatedly or seriously placing others at risk by their action prosecution might also be appropriate. 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 in order to use the Council's resources efficiently.
- 6.6 This approach compliments the Council's existing powers as the LLFA under the Land Drainage Act 1991 and Flood and Water Management Act 2010 to pursue enforcement for those instances where the proper flow of an ordinary watercourse is being impeded.
- 6.7 Where enforcement action is pursued, the Council as the LLFA may enforce under Section 66(6) of the Land Drainage Act 1991. Alternatively or as well, , 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.
- 6.8 For activities specified by byelaws, consent would be required, and the activity cannot be undertaken until the consent has been issued. However, an authority can set out in a byelaw how an activity should be undertaken meaning that the public is free to undertake the activity when they like as long as they comply with the details prescribed in the byelaw.
- 6.9 The adoption of the proposed byelaws will directly contribute towards the Council's strategic priority area 'Thriving villages and towns' by supporting 'sustainable planning for growth' in its Corporate Plan. Specifically, it would aid the Council to identify and manage flood risk and would facilitate stronger and more resilient communities.

Conclusions and next steps

- 6.10 The proposed byelaws are based on the DEFRA model byelaws and mirror those currently in use by the Bedford Group of Drainage Boards. The byelaws would enable the Council to monitor and enforce the efficiency of flood defences and drainage systems, and will provide scope for the Council to work with developers and local communities to reduce flood risk now and in the future.
- 6.11 Not making the byelaws would make it more difficult for the Council to take action to reduce flood risk in some circumstances.
- 6.12 Byelaws cannot come into operation until they have been confirmed by the Secretary of State.
- 6.13 To achieve the aims set out in this report, there are a number of stages that must be completed when making the byelaws. These are prescribed by DEFRA and are set out in Table 1.

Table 1: Stages which must be completed when making byelaws

Stage	Description
Councillor approval	Seek approval from Cabinet for the creation of land drainage byelaws before completing stages below.
Committee approval	Cabinet considers and makes recommendations for the byelaw process to be started.
Informal check by DEFRA	The proposed draft byelaws are forwarded to DEFRA for informal checking.
Formal consultation with stakeholders	Formal consultation takes place with Natural England and local navigational authorities (in West Northamptonshire this is the Canal and River Trust and, for the River Nene, the Environment Agency), Environment Agency, Bedford Group of Drainage Boards and water companies to make sure that the proposed byelaws do not conflict with or interfere with the operation of their byelaws.
Council decides whether to make byelaws	The Council undertakes the decision whether or not to make the byelaws. Under the Council's constitution, this decision is reserved to full Council. A final report would be presented to full Council which will consider any responses received during consultation.
Byelaws made and public consultation takes place	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. As part of this process the Council would: <ul style="list-style-type: none"> • Advertise in one or more newspapers circulating in the area affected the Council's intention to apply to the Secretary of State for the Environment, Food and Rural Affairs for confirmation of the byelaws. Use may be made of the Council's own website, as well as on-line advertising, but should not be used instead of the local press. • Deposit a copy of the byelaws at the offices of the Council for public inspection, for a period of at least one month, and supply a copy to any person on application.

Stage	Description
	<ul style="list-style-type: none"> Where possible, resolve any objections that are received.
Byelaws and feedback sent to Secretary of State	<p>The byelaws cannot come into operation until they are confirmed by the Secretary of State. The Council would make an application for confirmation accompanied by the following documents:</p> <ul style="list-style-type: none"> Two sealed and signed copies of the byelaws. A statement setting out where the byelaws were deposited, where advertised, dates and times, copy of the newspaper page(s) and (if used) website pages where advertised, together with a statement that the Council was satisfied that it had made appropriate efforts to reach all affected parties. Copies of any objections that may have been sent to the Council together with the Council's response; or if no objections are received, a statement to that effect. Statement that local and other public authorities (naming them) were notified and when.
Byelaws become effective	Unless otherwise decided, the byelaws would come into operation at the expiration of one month from the day on which they are confirmed by the Secretary of State.

6.14 Should any objections be received during the consultation period the Council would be expected, where possible, to resolve these before forwarding any unresolved issues with the final proposed byelaws to the Secretary of State for confirmation. Otherwise, the Minister may take into account relevant objections that have not been withdrawn when determining whether or not to confirm a byelaw. In some cases, the Council may consider that it is appropriate to meet the objectors' concerns by amending the byelaw in question. If such modifications would lead to significant and substantive change, the Council should then re-advertise the amended byelaws, or at least give all affected parties the opportunity to comment upon any proposed changes.

6.15 It is proposed that the Council would develop and publish a series of advice notes that will accompany the byelaws to aid with their future delivery and compliance.

7. Implications (including financial implications)

7.1 Resources and Financial

7.1.1 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 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.).

7.1.2 Between 2021 and 2023, the Bedford Group of Drainage Boards issued 483 consents on behalf of the Council. The creation of Council byelaws is not likely to have an impact on the number of consents issued due to the Council using the same byelaws as those currently used by the Bedford Group of Internal Drainage Board.

7.1.3 Where enforcement of the byelaws would require the construction or remediation of drainage infrastructure, the financial burden of this should be with the responsible party/landowner and not the Council.

7.2 **Legal**

7.2.1 A byelaw is a local law which is made by a statutory body, such as a local authority, under an enabling power established by an Act of Parliament and operates to control or regulate activities in certain places. The enforcement of the proposed land drainage byelaws would be undertaken for the purpose of securing appropriate management of flood risk in West Northamptonshire. The byelaws would be made under the Land Drainage Act 1991 and the Local Government Act 1972 and confirmed by the Secretary of State.

7.2.2 Section 236 of the Local Government Act 1972 sets out the legal requirements for making byelaws and DEFRA has published guidance for local authorities on making byelaws under Section 66 of the Land Drainage Act 1991. The byelaws would create criminal offences that can be prosecuted in the magistrates' courts. Any person who acts in contravention, or fails to comply with the proposed byelaws, will be guilty of a criminal offence punishable in the magistrate's court by way of a fine. The new byelaws would assist the Council in meeting 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.

7.3 **Risk**

7.3.1 As set out above, byelaws enable the Council to regulate works near watercourses in order to ensure that flood risk is not increased. Not making the byelaws could make it difficult for the Council to take action to reduce flood risk in some circumstances.

7.4 **Consultation and Communications**

7.4.1 The Bedford Group of Drainage Boards have expressed support to the proposed implementation of byelaws.

7.4.2 Should Cabinet approve this report, then formal consultation will take place with Natural England, the Canal and River Trust, the Environment Agency and water companies to make sure that the proposed byelaws do not conflict with or interfere with the operation of their byelaws. Later stages of consultation are detailed in Table 1.

7.5 **Consideration by Overview and Scrutiny**

7.5.1 None.

7.6 **Climate Impact**

7.6.1 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.

7.6.2 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 help to manage 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.

7.7 **Community Impact**

7.7.1 The proposed drainage byelaws would potentially reduce flood risk for some properties within communities with watercourses, which would have benefits for those residents.

8. **Background Papers**

8.1 None.