

Report to the Cabinet

Report reference: C-016-2013/14

Date of meeting: 22 July 2013



**Epping Forest
District Council**

Portfolio: Environment

Subject: Delegation of powers from Essex County Council to the Council under the Flood and Water Management Act 2010

Responsible Officer: Susan Stranders (01992 564197).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That an agreement with Essex County Council be entered into to accept delegation of the powers and duties under sections 23, 24, 25 of the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010 for the consenting of works to and the enforcement of, ordinary watercourses;

(2) That, in respect of works which fall within the scope of section 23 of the Land Drainage Act 1991 (as amended), a charge of fifty pounds be introduced for each structure proposed in consent applications, in line with the policy of Essex County Council with effect from the date on which the agreement comes into effect; and

(3) That, in respect of land drainage applications which fall outside the scope of section 23 of the Land Drainage Act 1991 (as amended), no charge to the public be implemented under the Council's Land Drainage Byelaws.

Executive Summary:

The Council has been exercising certain powers of the Land Drainage Act 1991 (LDA) (as amended), on behalf of Essex County Council (ECC), since April 2012 through a Letter of Understanding (Portfolio Holder decision ENV-002-2012/2013). An Agreement is required to formalise these arrangements and to allow the Council to enforce the relevant provisions. As part of this Agreement, ECC wish the Council to charge for land drainage applications that fall within the scope of section 23 of the Act, in line with its county wide policy. The report proposes formal approval of the delegation agreement and the charge arrangements which will apply once the agreement has been approved and has come into force.

Reasons for Proposed Decision:

To ensure that the Council retains the necessary powers to optimise the control of works to ordinary watercourses within the district in order to minimise flood risk. To ensure that charges and services are consistent across Essex for land drainage applications that would also fall under the auspices of ECC. To agree to maintain the existing service, without charge, for all other land drainage applications made under the Council's Land Drainage Byelaws (LDB).

Other Options for Action:

To not accept the delegated powers and let ECC exercise the relevant powers.

To charge for all other land drainage applications made under the LDB.

Report:

1. The Flood and Water Management Act 2010 (FWMA) amended those sections of the LDA relating to the consenting of works to watercourses. In summary, these changes move certain powers from the EA to the Local Lead Flood Authority. In Essex this is the county council.

2. The new legislation does not change the provisions or the manner in which the LDB are exercised. In principle, most of the type of work that is covered in the relevant sections of the LDA is also contained within the Council's Byelaws.

3. The FWMA allows ECC to arrange for certain flood risk management functions to be delegated. Given the Council has its own Byelaws and the necessary experience and well-regarded expertise, ECC has asked the Council if it wishes to exercise these powers on its behalf. ECC has offered to pay the Council for the consenting of works and enforcement that it would have been responsible for under the revised provisions.

4. The Council has been carrying out this work on behalf of ECC since 4 April 2012 through a Letter of Understanding, which sets out the working arrangements and the payment protocol (Portfolio Holder decision ENV-002-2012/2013). Previously, the Council carried out the majority of this work through an informal agreement with the Environment Agency (EA); with no associated charging regime.

5. An Agreement is required to formalise these arrangements. It is proposed by ECC that the Agreement is renewed on an annual basis. **(Recommendation 1)**

6. As part of this Agreement, ECC require the Council to charge for land drainage applications that fall under section 23 of the Act, in line with its county wide policy. The maximum amount allowed to be charged is set by the legislation. ECC has set the charge at the maximum, which is currently fifty pounds per consent. The fee is payable in respect of each separate structure or other element forming to project. In addition ECC has offered to pay the Council an additional amount for exercising these powers. **(Recommendation 2)**

7. Historically, the Council has not charged for applications made under the LDA. It is considered that the income gained, taking into account officer's time and the administrative support that would be required as part of the invoicing process etc, does not outweigh the benefits in terms of controlling works and minimising flood risk within the district. It is also considered that, on balance, the income would not offset the additional officer time and resources that would be spent on enforcement, given the public would be less willing to let the Council know about the proposed land drainage works. It is proposed that no charge will be applied for land drainage applications that involve works that fall under the Byelaws but are outside of the scope of works covered by section 23 of the LDA. **(Recommendation 3)**

8. This charging system may appear to be inconsistent. However, works that fall under section 23 of the LDA tend to be much more significant works. These are specified in the legislation and include:

- the culverting of;
- alterations to existing piped; and

- installation of a weir or dam to, ordinary watercourses.

9. Generally, these will apply to developments and major alterations. Land Drainage Consent would also be required under the LDB for these types of works. Works that fall outside the scope of section 23, on the whole, tend to be relatively minor works that the everyday riparian owner may wish to make to the ditches and ordinary watercourses. Given this, it is thought that the divide for charging is fair.

10. ECC has given no discretion to the Council as to whether it charges for land drainage applications that fall within the scope of section 23. ECC has agreed to pay the Council an additional amount, over the maximum charge, for processing land drainage applications and the proportionate costs involved in associated enforcement; the provisions of which are contained in sections 24 and 25. The Council will also retain the income from the charges.

11. It should be noted that the FWMA has introduced a huge amount of work for Local Authorities and changes the way in which historic flood risk management duties have been carried out. The working arrangements between ECC and the Council will need to be assessed and reviewed on a regular basis. However, it is considered that by taking on this delegated role a more streamline service will be delivered to the public, who will otherwise have to apply to both ECC and the Council for land drainage consent to do certain works. It is also strongly considered that this will allow the Council to maximise control over flood risk assets and infrastructure and reduce flood risk across the District.

Resource Implications:

ECC proposes to:

- (i). Supplement the Council per application made, under section 23 LDA, in line with the EA's current assessment of the actual costs of determining an application – currently £100 (this excludes the £50 charged for each consent that the Council will retain);
- (ii) Pay the Council the proportionate amount of an Engineer's salary (£30,000) who would otherwise be undertaking pre-application and initial enforcement work; in addition; and
- (iii) ECC will reimburse the Council on a cost recovery basis for enforcement cases that progress past initial stages, as agreed with ECC.

In addition to the £1500 (approximately) generated through the charging regime, based on the current estimate of number of consents that would need to be issued under section 23, the Council should receive payment of approximately £12,700 per annum for undertaking this work on behalf of ECC. This amount is only indicative and may change over time dependant upon actual volumes of work and, for example, whether any legal action is required against riparian owners. Any income received cannot be considered as a permanent source of revenue. Therefore, this amount cannot be relied on to offset the existing Continuing Service Budget allocation. Previously the Council was carrying out the majority of the work on behalf of the EA with no financial recompense.

For consideration, if the Council wished to charge £50 for all land drainage applications that fall just within the scope of the LDB, it would generate about £1500 to £2000 per year. This is based on the average number of applications received over the last 3 years. The amount is only indicative and will depend upon actual volumes of work.

It is currently considered that the work can be carried out within existing staffing resources. A full assessment of the quantity and type of work and the impact on resources will need to be reviewed periodically. However, at this time it is considered that any additional staffing

resources that may be required (through overtime etc) will be covered by the payments received from ECC.

Legal and Governance Implications:

Local Government Act 1972 (section 101)
The Flood and Water Management Act 2010
Land Drainage Act 1991
Public Health Act 1936
Council's Land Drainage Byelaws

Safer, Cleaner and Greener Implications:

Efficient and effective management of watercourses and flood risk is in accordance with the Council's Safer, Cleaner, Greener strategy.

Consultation Undertaken:

Legal Services
Democratic Services

Background Papers:

Nil

Impact Assessments:

Risk Management

Flooding is listed as a predominant risk in the Council's Emergency Planning Local Risk Register. The ability to control and monitor the majority of works being carried out on ordinary watercourses within the district and to be able to take the necessary enforcement action, demonstrates that the Council is committed to minimising flood risk.

The inability to implement the requirements of the FWMA, which includes delays in decisions and obtaining approvals with regards the potential delegation from ECC to the consenting of works to ordinary watercourses, is itemised in the Risk Matrix in the Environment and Street scene's Business Plan 2013/2014. If the Council exercises the amended powers under sections 23, 24 and 25 of the LDA, under delegated power from ECC, then there will be no need to revise the Risk Matrix.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.