

**REDDITCH BOROUGH COUNCIL**

# **OVERVIEW AND SCRUTINY COMMITTEE**

**25 August 2010**

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**REPORT TITLE Ditches and other Land Drainage Matters**

Relevant Portfolio Holder	Cllr Brandon Clayton
Relevant Head of Service	Guy Revans - Head Environmental Services
Key Decision / Non-Key Decision	

**1. SUMMARY OF PROPOSALS**

To update Members on progress with regard to the monitoring of ditches and other associated land drainage strategies, including an update on recent changes in legislation.

**2. RECOMMENDATIONS**

**The Overview and Scrutiny Committee is asked to RECOMMEND that:**

- 1) the Council's policies on ditches be initially applied to Arterial Ditches only;**
- 2) the Council should consider its position with regards to the implications of the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010;**
- 3) a report being prepared by officers, as previously instructed by Members, setting out proposals for a joint, North-Worcestershire Land Drainage Partnership in accordance with the above guidance; and**

**to RESOLVE that the report be noted.**

**3. BACKGROUND**

- 3.1 The Council has taken a keen interest in flooding related matters particularly since the July 2007 Floods, and following the Joint Scrutiny Exercise into these events. Officers brought forward formal policies (where none previously existed) on 17th June 2009 for the consideration of the Overview and Scrutiny Committee which covered a range of Land Drainage topics these were subsequently passed forward to the Executive Committee (12th August 2009) and formally ratified by Full Council on 26th October 2009.

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3.2 Consequently, these policies have been rolled out internally to other relevant departments and changes in certain working practices have already occurred.

### **4. KEY ISSUES**

4.1 The Council has obligations, both as a major riparian landowner and also as a LDA, to both comply with and enforce the Land Drainage Act 1991 as well as the new legislation listed in section 6.1 below.

4.2 We have developed close working relationships with our Land Drainage partners and have also seen the completion of some high-profile enforcement actions.

4.3 Attached are Appendices 1 - 6, which sets out progress in a more detailed fashion for Members to consider. Examples of relevant areas are included where appropriate. In addition, a PowerPoint presentation also illustrates the various points for Members to consider

### **5. FINANCIAL IMPLICATIONS**

5.1 The current operational arrangements are already fully funded, subject to a limited amount of emergency responses. The bulk of the approved policies merely direct how these funds and efforts are best utilised. In addition, when working in conjunction with other Council service units, works can be planned on a joint basis for the proper delivery of these objectives in an efficient and timely fashion.

5.2 The Flood and Water Management Act sets out raising fees for consenting of works to Ordinary Watercourses, if so delegated by the LLFA (WCC). Typically, these fees do not reflect the actual direct costs of consenting – currently the EA charges £50.00 per application. However, where these works are consented, they would not have a detrimental affect upon flood risks and therefore the actual costs of ensuring compliance are more than offset by savings in potential revenue and other emergency costs associated with any unapproved installations.

5.3 Also there is an obligation to designate features in addition to our existing culvert and similar records. Defra has already stated that any new obligations will be fully funded as set out in their factsheets dated 28 July 2010 (Appendix 4).

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- 5.4 With respect to a possible collaboration with Bromsgrove and Wyre Forest District Councils, we initially recommend that we 'pool' existing funded resources in an endeavour to deliver enhanced services without initial increased costs (see Appendix). Once experience of working within the new legislation occurs, officers will be in a better position to more accurately forecast any medium or long term financial implications and so advise Members at a later date.

### **6. LEGAL IMPLICATIONS**

The Council has a duty to comply with:

- a) Environment Act 1990;
- b) Land Drainage Act 1991;
- c) Flood Risk Regulations 2009; and
- d) Flood and Water Management Act 2010.

### **7. POLICY IMPLICATIONS**

- 7.1 Land Drainage matters have been considered at previous committee meetings and Overview and Scrutiny has taken interest in scrutinising the issue in recent years. This has led to recommendations and decisions being made on the subject at the following meetings: -

- a) Overview and Scrutiny Committee, 18th March 2009;
- b) Overview and Scrutiny Committee, 17th June 2009;
- c) Executive Committee, 12th August 2009; and
- d) Council, 26th October 2009,

- 7.2 The conclusions reached by Members in relation to this report may form the basis of subsequent recommendations to both Executive Committee and Council for formal decisions.

### **8. COUNCIL OBJECTIVES**

This item closely interfaces with all Council Objectives as new environmental powers are to be imposed, in addition to existing and enhanced enforcement responsibilities by the new Flood and Water Management Act 2010.

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### **9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

- 9.1 The recommendations outlined in this report should help the Council to maintain and improve flood risk for the area which includes working with the LLFA, and in particular the preparation of Multi-Agency Flood Plans and Surface Water Management Plans.
- 9.2 These actions would also enhance our capacity to respond to possible varied climatic effects by collaborating with appropriate neighbouring authorities.

### **10. CUSTOMER IMPLICATIONS**

- 10.1 The suggested actions would improve flood risk management and minimise the impact of any future flooding events. Improved Emergency Planning procedures will offer better protection against major events such as 20th July 2007.
- 10.2 There is a National Emergency Exercise planned for early 2011. Councils and other authorities are open to Defra scrutiny to see if there have been any improvements in potential responses post-2007.

### **11. EQUALITIES AND DIVERSITY IMPLICATIONS**

There are no equalities or diversity implications.

### **12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT**

- 12.1 Initially, as set out in section 9 above, it is suggested that we monitor what improvements can be achieved for policy and enforcement through collaborative working, initially through the use of existing budgets only.
- 12.2 For operational matters, where collaboration either formally or informally is necessary, it remains the responsibility of a district to fully fund such operations within its own area. Also, certain skills will now need to be required by all organisations and officers consider that by use of a shared resource, reduced impact will be possible.

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### **13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

13.1 All current Land Drainage policies comply with Climate Change laws and regulations. We regularly review operational procedures to ensure the lowest possible carbon footprint dependant of course on weather effects.

13.2 New legislation confers additional powers on all relevant drainage authorities to incorporate environmental improvements including biodiversity and the maintenance or re-creation of water-based habitat allowing appropriate species of flora and fauna to thrive.

### **14. HUMAN RESOURCES IMPLICATIONS**

14.1 Initially there should be no human resources implications as it is suggested that relevant officers from constituent partners form a collaborative team sharing common practices and policies for delivery on behalf of the LLFA.

14.2 Any additional operational resources will be procured externally by means of current Term Contracts supported by additional funding from other relevant partner authorities.

### **15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

There are no governance or performance management implications.

### **16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998**

There are no community safety implications.

### **17. HEALTH INEQUALITIES IMPLICATIONS**

There are no health or inequalities implications.

### **18. LESSONS LEARNT**

Priorities are regularly reviewed in the light of any improvement schemes, climatic effects or changes in statutory duties and powers. Following the proposed National Emergency Exercise referred to in 10.2 above, there may be additional directions from both Defra and/or the LLFA.

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### 19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

A possible district based river warden scheme is being considered for urban areas in conjunction with lengthmen for parishes in rural areas. This scheme, if pursued, will be developed in conjunction with relevant partners and referred to Members in advance for approval. It is envisaged that such functions would either be on a voluntary basis or where applicable, supported by the local Parishes and/or LLFA.

### 20. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No
Chief Executive	Yes
Executive Director (S151 Officer)	Yes
Executive Director – Leisure, Cultural, Environmental and Community Services	Yes
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Director of Policy, Performance and Partnerships	No
Head of Service	Yes
Head of Resources	No
Head of Legal, Equalities & Democratic Services	No
Corporate Procurement Team	No

### 21. WARDS AFFECTED

All Wards

### 22. APPENDICES

Members are advised that although the Defra documents in Appendix 4 are titled, not all matters relating to local authority responsibilities are so listed.

Appendix 1	Notes re Overview and Scrutiny, Minute 192, 18/03/09.
Appendix 2	Notes re Overview and Scrutiny, Minute 20, 17/06/09.
Appendix 3	Notes re Executive Committee, Minute 81, 12/08/09.
Appendix 4	Defra Factsheets, issued on 28/07/10.
Appendix 5	Summary of outstanding works, post-2007.
Appendix 6	PowerPoint presentation (visual only at Committee).

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**23. BACKGROUND PAPERS**

Defra Guidance Notes for the Flood and Water Management Act 2010  
dated 28 July 2010.

**24. KEY**

Defra Department for Environment Food and Rural Affairs  
EA Environment Agency  
LDA Local Drainage Authority  
LLFA Lead Local Flood Authority

**AUTHOR OF REPORT**

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### **Appendix 1 Progress Notes, Overview and Scrutiny Committee, Minute 192, 18th March 2009**

A combined Worcestershire Land Drainage Protocol was formally adopted by Council on 26th October 2009, a part of which sets out common enforcement procedures. These have already been successfully applied in two instances.

As a part of WETT, a Land Drainage function has been identified but as yet it is unclear what the extent of these functions are. They are potentially only applicable to former Local Drainage Authority functions in relation to enforcement as it will become the responsibility of the Lead Local Flood Authorities, or approved partner organisations acting on their behalf, to consent works to ordinary watercourses and to provide corresponding advice on policy and other strategic matters.

Problems surrounding enforcement remain in respect of the level of delegated powers. It is not suggested that they be considered at this time, but when further details of any new working arrangements emerge. At that time, it may be possible to aggregate combined responsibilities and consideration be given to raising thresholds at least on a pro-rata basis. Otherwise, where such situations arise, both Members and officers will remain hampered by the extent to which Member approval in advance is required, thereby necessarily extending the time taken for enforcement to be carried through to a satisfactory conclusion.

There is only one Parish Council within the Council's area, Feckenham. Worcestershire County Council (WCC) in collaboration with Feckenham Parish Council, have jointly funded the provision of a Parish lengthmen. There are other rural areas within Redditch as well as all the other urban districts. It is suggested that a voluntary, community focussed scheme be set up so that there are similar lengthmen/wardens for all other districts. This would need to be considered at the time of any new arrangements arising out of the new legislation. These would be a welcome second-line support to the Council's existing operational arrangements and may assist, particularly during inclement weather, the appropriate deployment of resources in a timely and focussed fashion.

As a part of working on Multi-Agency Flood Plan (MAFP) and Surface Water Management Plan (SWMP) these will bring to the fore key problem areas and required actions in Worcestershire. Each partner is currently engaged either independently or as in our case, in collaboration with Bromsgrove District Council (BDC).



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Progress with regards to Reservoirs and associated risk management has unfortunately been painfully slow. Defra appears to be constantly extending deadlines for the Environment Agency (EA) to respond. Despite new obligations for smaller reservoirs, there appears to be little or no information available in respect of existing significant ones. Later timescales have been prescribed for these smaller ones.

Mention was previously made in respect of Hewell Lake, situated within the BDC area. Subsequent investigations for other purposes revealed that the overflow weir was formerly provided with four sluices, primarily to regulate flows for milling purposes, which became dilapidated and subsequently removed. Investigations into the exact causes and hence corrective measures and apportioning of blame will be necessarily costly and time-consuming. There is no guarantee that swift enforcement actions could effectively be pursued,

Officers have monitored the performance of the new Batchley Brook Improvement Scheme, which fully meets its design objectives. However, the December 2008 flood event demonstrated that Redditch was receiving exceptionally high flows from upstream, from the Batchley Brook via Hewell Lake. It occurs to officers, that for a relatively modest cost, three of the sluices could be reinstated, thereby severely restricting the potential for high flows for whatever reason, being passed forward to Redditch. Obviously this may have implications for the reservoir owners (Her Majesty's Prisons). If acceptable to the owners (free of charge) the Council provisionally proposes to provide these sluices and as this would a flood defence measure solely for Redditch purposes, the Joint Chief Executive supports in principle that these works in BDC's area being so undertaken. This proposal will, of course, be subject to the usual procedures for bidding and procurement.

The protocol and other policies referred to in the Item 192 report were completed as listed in Section 7 of the main report for this meeting.

In response to the resolutions: -

- 1) This update was originally scheduled for March 2010 but owing to long-term officer illness had to be deferred to this time.
- 2) Revised maps have been produced, including one for web-based purposes, allowing customers to identify which watercourse they are concerned with or commenting upon. (These are included within the PowerPoint presentation, but can be reproduced in other formats upon request).

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- 3) The policies and other documents were in addition to the Minutes arising from the meetings listed in Section 7 of the main report were approved and subsequently ratified by Council on 26th October 2009.

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### **Appendix 2 Progress Notes, Overview and Scrutiny Committee, Minute 20, 17th March 2009**

The publication of legislation and other factsheets and guidance notes by Defra has confirmed that the primary strategic and emergency planning roles are to be delivered by the Lead Local Flood Authorities (LLFA). The relevant Regulations and Acts are listed in Items 6.c) and 6.d) of the main report.

It now emerges that other roles are to be delivered where possible more locally subject to the approval of the LLFA. Also, it is recognised that new enhanced roles are not going to be capable of being delivered by many authorities on an individual basis and advice is given as to how these may be performed by a number of partnerships. The exact details are to be approved by the LLFA who are empowered to act in default should circumstances warrant it.

Although we were approached informally by a firm of consultants BWB Consulting who kindly made a presentation to Committee, County the LLFA, has preferred partners whom they have already engaged.

In response to the resolutions: -

- 1) As per Appendix 1, the policies and other documents were in addition to the Minutes arising from the meetings listed in Section 7 of the main report were approved and subsequently ratified by Council on 26th October 2009.
- 2) The officers of respective Councils in North-Worcestershire have actively engaged in discussions regarding a prospective local land drainage partnership. Following a meeting on 3rd August 2010, delayed because of the earlier long-term illness of the Operations Manager, informal exchanges of information has now taken place. Once the relevant officers can formulate a combined strategy to address expectations set out in the Flood and Water Management Act 2010, these will be referred to the relevant Heads of Service, Joint Chief Executive and subsequently Members for approval in due course.

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## **Appendix 3 Progress Notes, Executive Committee, Minute 81, 26th October 2009**

Funding matters have yet to be clarified except that Defra repeatedly states, that where there are any new responsibilities, these will be fully funded. Initially it is seen that this chiefly applies to LLFA (Worcestershire County Council). However, where functions are permissively delegated to other authorities and/or partnerships, then corresponding funding elements are to be passed forward.

Whilst Redditch currently is recognised as having a good set of asset records, these need to be aligned with the latest legislation, to include all “designated features”. Rather than being confined to pipes, culverts, weirs and the like, designated features include any feature that has an affect upon flood defence and/or flood routing. Examples of these are:

- 1) Highway embankments
- 2) Bunds and berms
- 3) Balancing Areas
- 4) Garden Walls

By virtue of the new Flood and Water Management Act 2010, such new features would enjoy the same level of protection and enforcement as existing ones (currently protected by means of Section 23 of Land Drainage Act 1991).

Through pursuing engagement with both Bromsgrove District Council and Wyre Forest District Council, officers believe it will be possible to enhance service delivery both operationally and strategically. This is in line with Members earlier guidance but will be subject to subsequent detailed referral, as indicated in Appendix 2. Consequently, such a system would allow the relevant local authorities to retain as much control and influence as possible.

The new Act also confers additional powers and responsibilities with regards to sustainability and environmental matters. With reference to Defra’s factsheet (Appendix 4), specific mention is made in addition to hydraulic and hydrological factors to ‘works that are deemed by the relevant authority to be desirable for the natural environment, or other aspects of the environment, such as historic environment, landscape, amenity or leisure benefits.’ With a significant amount of abandoned former drainage assets, particularly related to former milling activities, there is both an opportunity and a need to recognise such features.

Officers remain vigilant to the effects of climate change and as a consequence, regularly monitor performance, particularly where new or improved works have

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been carried out. Part of this process, includes a cyclic review of balancing areas which allows maintenance regimes to be modified accordingly. Experience shows that where such features operate at their limits, some form of adaptation may be necessary to ensure their long-term fitness for purpose.

Officers are working with LLFA and other neighbouring authorities in the preparation of Multi-Agency Flood Plans (an emergency planning tool) and Surface Water Management Plans (a strategic and planning tool). The former is at an advanced stage and is provisionally scheduled to be published in the autumn. The latter document is only now being progressed and the first workshop is expected to take place on 16th August 2010. Details of availability of the final plan are not yet available.

Working within the Worcestershire Land Drainage Partnership continues with the next meeting scheduled for 23rd August 2010. If necessary, a verbal update will be provided to Members at Committee. The information sharing has been extremely variable, although an updated spreadsheet records the current assets and resources criteria.

In terms of a prospective land drainage partnership for North-Worcestershire, with reference to census and other data, if Bromsgrove, Redditch and Wyre Forest were to collaborate, this would represent roughly 49% of the population of Worcestershire. All three are geographically linked to one of the partner organisations and most importantly retains both banks of the River Severn under the control/influence of one organisation in addition to EA. Area-wise, this is relatively compact amounting to 26% of Worcestershire and excluding Worcester City, contains the next two largest conurbations of Redditch and Kidderminster respectively.

In response to the resolutions: -

- 1) As per Appendix 1, the policies and other documents were in addition to the Minutes arising from the meetings listed in Section 7 of the main report were approved and subsequently ratified by Council on 26th October 2009.
- 2) The officers of respective Councils in North-Worcestershire have actively engaged in discussions regarding a prospective local land drainage partnership. Following a meeting on 3rd August 2010, delayed because of the earlier long-term illness of the Operations Manager, informal exchanges of information has now taken place. Once the relevant officers can formulate a combined strategy to address expectations set out in the Flood

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