

NORTH LINCOLNSHIRE COUNCIL

**HIGHWAYS AND PLANNING
CABINET MEMBER**

FLOOD PREVENTION – POLICY ON LAND DRAINAGE ENFORCEMENT

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To seek adoption of a policy document relating to permissive powers under the Land Drainage Act 1991.
- 1.2 The key points in this report are:-
- On 19 March 2008 the council's constitution was reviewed and updated to extend the delegated powers of the Service Director Highways and Planning in relation to the Land Drainage Act 1991 to the Service Director Neighbourhood and Environment.
 - The powers available under the Act are permissive in nature.
 - A policy document 'Policy and Guidance on Land Drainage Enforcement' setting out when the powers will be used has been prepared.

2. BACKGROUND INFORMATION

- 2.1 At the meeting of Full Council on 19 March 2008 (minute 1549 refers) the constitution was reviewed and updated. In response to ongoing flood issues the delegated powers of the Service Director Highways and Planning in relation to the Land Drainage Act 1991 were extended to the Service Director Neighbourhood and Environment. This action was required to provide additional coverage with respect to drainage and flooding to support the Service Director Highways and Planning who currently has delegated permissive powers but only in relation to highways.
- 2.2 To minimise the potential for further flooding the North Lincolnshire Flood Forum is still proactively tackling a plethora of drainage issues across North Lincolnshire. The Forum is a multi agency group consisting of the Environment Agency, Severn Trent, Anglian Water, Internal Drainage Boards, Fire Brigade, Government Office for Yorkshire and Humber and the Council.
- 2.3 The relevant provisions of the Land Drainage Act 1991 are permissive powers rather than duties. It is good practice for the Council to set out clearly when the powers will be used. Following consultation with the Forum members the document at Appendix I 'Policy and Guidance on Land Drainage Enforcement' details the proposed policy.

3. OPTIONS FOR CONSIDERATION

- 3.1 Option 1 – Continue with existing arrangements with no formal policy.
- 3.2 Option 2 – Adopt a policy setting out clearly the circumstances under which the council will use the permissive powers set out in the legislation.

4. ANALYSIS OF OPTIONS

4.1 Option 1

- 4.1.1 This option does not clarify the circumstances under which the Council will use its permissive powers.

4.2 Option 2

- 4.2.1 Adopting the proposed policy and guidance document complies with good practice and provides a reference point on the council's policy for all landowners who may have land drainage responsibilities.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 The permissive powers set out in the Land Drainage Act 1991 will have a minor impact on staff resources where landowners do not voluntarily maintain drainage systems on their land and enforcement action is required. This work will be carried out jointly across both Departments.
- 5.2 The costs of any work carried out in default can be recovered from the landowner.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY SECTION 17 CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Adoption of the policy and guidance is a further step in the Council setting out the range of actions being taken to help mitigate further environmental damage caused by flooding.

7. OUTCOMES OF CONSULTATION

- 7.1 The Flood Forum representatives and Service Director Legal and Democratic have been consulted on the proposed policy and guidance note.
- 7.2 Comments have been received from the Environment Agency, North East Lindsey Internal Drainage Board and Service Director Legal and Democratic. The comments are supportive and have proffered alterations/additions to the document, which have been incorporated in to the final document at Appendix I.

7.3 The policy document has been considered and approved by the Cabinet Member Neighbourhood, Environment and Communities on 26 November 2008 (minute 51 refers).

8. **RECOMMENDATION**

8.1 To adopt the document at Appendix I 'Policy and Guidance on Land Drainage Enforcement', which sets out the circumstances under which the Council will use the permissive powers set out in the Land Drainage Act 1991.

SERVICE DIRECTORS HIGHWAYS AND PLANNING and NEIGHBOURHOOD AND ENVIRONMENT

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Background Papers used in the preparation of this report

- Kennet District Council: Policy on Land Drainage Enforcement
- Worthing Borough Council: General Information Regarding Land Drainage Responsibilities
- Epping Forest District Council: Land Drainage Policy Statement
- Sefton MBC: Land Drainage Flooding Protection Policy

North Lincolnshire Council

Policy and Guidance on Land Drainage Enforcement

Introduction

Flooding of land and property is an intermittent problem across North Lincolnshire. Flooding is a natural process which can never be stopped or prevented entirely, however steps can be taken to reduce flooding risk. These include periodic cleansing and scouring of watercourses, the removal of obstructions, the maintenance and erection of structures for controlling the flow of water and the execution of land drainage and flood relief schemes.

The Department for Food, Environment and Rural Affairs (DeFRA) sets the overall Flood Defence Policy for England. Operational responsibility for land drainage is devolved to the Environment Agency and Internal Drainage Boards. In addition, local authorities such as North Lincolnshire Council, and riparian owners may undertake works to maintain the flow of watercourses and carry out drainage works on ordinary watercourses not within an Internal Drainage District. North Lincolnshire Council works in partnership with all relevant agencies under the auspices of the North Lincolnshire Flood Forum.

The main legislation relating to Land Drainage is the Land Drainage Act 1991. This empowers the Council and Internal Drainage Boards to maintain and improve existing works and to construct new works. They also have powers to serve notices requiring other persons to maintain the flow of watercourses and to carry out works in default.

This policy statement has been prepared by North Lincolnshire Council to provide a public statement of the Council's approach to the use of its enforcement powers under the Land Drainage Act 1991. The Council's approach is to mitigate the effect of flooding by working with our partners to ensure so far as is reasonably practicable that the surface water and drainage systems within our area perform satisfactorily.

The Council has no direct responsibility to solve flooding problems but has powers under the Land Drainage Act 1991 to ensure that appropriate maintenance and clearance work is undertaken for ordinary watercourses, drainage ditches and other systems taking land drainage.

In addition there are rights and responsibilities arising from riparian ownership of land drainage infrastructure and situations where a duty of care exists.

Land Drainage Powers of North Lincolnshire Council

Under the Land Drainage Act 1991, where no Internal Drainage Boards exist, North Lincolnshire Council has permissive powers for preventing flooding arising from poor maintenance of "ordinary" watercourses i.e. those watercourses not designated as main rivers.

These powers are contained in the following sections summarised below:

Section 14(2): contains general powers for the Local Authority to maintain and improve existing ordinary watercourses and to construct new works.

Section 14(3): empowers the Local Authority, if it so wishes, to carry out drainage works (other than on main rivers) 'for the benefit of its area, in lands outside that area'.

Section 14(4) & Section 64: give the Local Authority necessary powers of entry to carry out drainage functions.

Section 15: allows the Local Authority to carry out normal land drainage practice of spreading soil on adjacent land while carrying out watercourse improvement works.

Section 17: provides that, except in an emergency, the Local authority must obtain the consent of the Environment Agency before commencing any works on the drainage system. The work can be subject to any reasonable conditions imposed by the Environment Agency.

Section 18: allows the Local Authority to carry out schemes for the drainage of small areas which could be improved by drainage works.

Section 20: allows the Local Authority to undertake drainage work for any person at that person's expense.

Section 25: empowers a Local Authority to serve notice on persons requiring them to carry out necessary works to maintain the flow of ordinary watercourses. If the person served does not comply with the notice, the Local Authority may carry out works in default and recover its reasonable expenses. However, the Local Authority must notify either the Environment Agency or the Internal Drainage District before a notice is served (Section 26) and the person served with the notice may appeal to the Magistrates Court within 21 days (section 27).

Section 60: empowers a Local Authority to contribute to the expenses of drainage work in their area.

Section 66: empowers the Local Authority to make byelaws to secure the efficient working of the drainage system in its area.

The Local Authority also has powers under the Public Health Act 1936:

Section 259: enables the Local Authority to deal with any pond, pool, ditch or watercourse which is so foul, or in such a state, as to be prejudicial to health or any non-navigable watercourse which is choked and silted so as to obstruct or impede the proper flow as a statutory nuisance.

Section 262: allows the Local Authority to require the culverting of a watercourse if building operations are proposed

Section 264: enables the Local Authority to require the owner or occupier of land to repair and clean any culvert in, on or under that land.

Before the Local Authority exercises any of these powers in relation to a watercourse which is within the Environment Agency's jurisdiction, it must consult the Environment Agency.

Responsibilities of Riparian Owners

A 'riparian owner' is the owner of land through which a ditch or watercourse flows. This applies even if the drain flows through the land by means of an underground

pipe, even though the property owner may not know the drain exists. Under drainage law the property or landowner has the responsibility to maintain the land drainage system where it crosses or borders that land or property.

Individual property owners are not only responsible for the drainage of their own land but for also accepting and dealing with the natural flows from adjoining land. They must not create or permit any obstruction to that natural flow.

A riparian owner has the following rights and responsibilities:

- The owner must exercise a duty of care in maintaining the drainage system.
- The owner cannot carry out any work which would affect the flow of an ordinary watercourse without consent from the drainage board. (Section 23 Land Drainage Act 1991).
- Disputes regarding ditch maintenance between adjoining landowners can be taken to the Agricultural Land Tribunal (Sections 28 to 31 Land Drainage Act 1991)
- The owner must give access to land for maintenance of watercourses. (Powers to enforce this are contained in section 64 Land Drainage Act 1991).
- There is no common law duty on the owner to improve a watercourse but the owner must pass on flow without obstruction.
- The owner has the right to the use of the water for domestic purposes and for the watering of livestock or other purposes provided it does not interfere with the rights of other owners.
- With consent from the Environment Agency or Water Company the owner may use water for irrigation provided that the watercourse is not exhausted so as to injure the natural rights of downstream owners.

Procedure to be adopted in exercise of the Council's powers

The Council will in accordance with the priorities set out below investigate flooding incidents and complaints relating to ordinary watercourses. Where appropriate advice may be offered to landowners on maintenance and protection measures to reduce the risk of flooding.

If an ordinary watercourse is found to be in need of maintenance the following general procedure will be followed:

- 1) The ordinary watercourse will be inspected and surveyed to establish the extent of the required maintenance work.
- 2) The landowner will be contacted by letter and requested to undertake specified maintenance work within a stipulated time period.
- 3) If the landowner does not undertake the work as specified a reminder will be sent and this letter will also outline the likely enforcement action that will be taken if the work is not completed within an extended time period.

- 4) The total time period of (1) and (2) will need to be reasonable and will depend on the extent of the maintenance work specified, but generally it will be not less than four weeks.
- 5) If the landowner fails to complete the maintenance work as specified within the extended time period the Service Director for Highways and Planning and the Service Director Neighbourhood and Environment or their delegated representatives will consult the Council's Solicitor about service of a notice under Section 25 of the Land Drainage Act 1991.
- 6) The Council will on default of the Section 25 Notice undertake the stipulated work and will recover the costs from the Landowner as allowed under Section 25.
- 7) The Service Director for Highways and Planning and the Service Director Neighbourhood and Environment will consult with the Council's Solicitor about the prosecution of the landowner for default of the Section 25 Notice.

If the condition of the ordinary watercourse is likely to cause internal flooding to residential or commercial properties or there is a risk to life the enforcement process time periods may be foreshortened and in the most serious circumstance start with the service of a section 25 notice under the Land Drainage Act.

All evidence will be gathered in a way to enable it to be used in court.

Priorities

The demand for enforcement action will at times exceed the Council's resources. The following criteria will be used to decide the priorities for action:

- a) Property (internal flooding of living accommodation)
- b) Property (internal flooding near miss)
- c) Critical watercourses
- d) Highway (main route)
- e) Highway (main access to village)
- f) Footpaths/Rights of Way

Note: enforcement action is unlikely in the following circumstances:

1. To protect gardens and fields where no other risk identified.
2. Where it is beyond the means of the landowner or the Council to undertake the work.
3. Where there is no flooding or immediate risk of flooding.

Partnerships and review of the policy

The Council will work in partnership with all relevant agencies via the North Lincolnshire Flood Forum.

This Policy was approved by On North Lincolnshire Council will review this policy every three years, when it will be revised and re-issued as necessary.

Meanwhile North Lincolnshire Council welcomes any comments on the approach and policies set out in this statement at the following address:

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Acknowledgements

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