



Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

FLOOD MANAGEMENT & ALLEVIATION REVIEW

31st March 2010

Consideration of Flood Risk in Planning Work

1.0 Introduction

- 1.1 Following the meeting of the Flood Management and Alleviation Review task group on the 14th January 2010, the planning service was asked to progress point 8 on the action plan – to look at the impact of the Floods and Water Management Bill on the planning service and the City Council.
- 1.2 This report focuses on that Bill, but also covers other relevant legislation which is linked to the role of the City Council as local planning authority and the future use and management of water resources and flood risk.

2.0 Legislation

- 2.0.1 The EU Water Framework Directive and Flood and Water Directive (2000/60/EC & 2007/60/EC) placed a duty on member states to manage water resources effectively, map areas at risk of flooding and put in place plans to manage this risk.
- 2.0.2 The Flood and Water Directive was partially transposed into UK law through the Flood Risk Regulations 2009 (SI 3042/2009), with other measures requiring primary legislation through the Flood and Water Management Bill currently before parliament.
- 2.0.3 As well as these, guidance has been published by DEFRA to promote the better use of rainwater harvesting and preparation of Surface Water Management Plans.
- 2.0.4 Similarly, specific land use planning guidance and regulations have been published, including an amendment to the Town and Country Planning (General Permitted Development) Order to allow local authorities to control the use of domestic hard surfacing in some instances and an update to national Planning Policy Statement 25: Development and Floodrisk to promote the use of Sustainable Urban Drainage Systems and advice on the preparation of Strategic Flood Risk Assessments.
- 2.0.5 The implications of the key items of legislation for the City Council and the planning service are laid out below:

2.1 Flood and Water Management Bill

2.1.1 The Bill was published in draft form in April 2009 for consultation. The following is taken from that draft so could potentially be in a different form once passed. Key new elements:

1) Clarification of roles and responsibilities for flood risk management: set out in Figure 1 in the Bill. The following is a link to the Bill: <http://www.official-documents.gov.uk/document/cm75/7582/7582.asp> . The Environment Agency are to retain their responsibility in relation to “enmained” watercourses and gain an overview role in relation to all flood risk management activities. Lead Local Flood Authorities (LLFAs) – upper tier local authorities – are to gain a local leadership role and an executive function, although the latter is unlikely to be more than the operational capacity which Regeneration, Highways and Transportation (RH&T) currently exercise. Most of the items in the table are already being progressed – for example the pluvial mapping referred to at the last meeting (Appendix D, para 3.14) will help the City Council meet bullets 3,5,7 and 9.

2) Duty to share information: The EA, LLFAs, Water Companies, Internal Drainage Bodies where they exist and the local highway authority will have a new duty to co-operate and share information. The EA will set the standards for information to be shared and facilitate the creation of data-sharing agreements, for example setting up a national database. This new duty to co-operate will mean that the City Council is likely to need to record flooding events to share the data. The duty will also aide the production of a Surface Water Management Plan and Strategic Flood Risk Assessment by potentially making access to partner’s records easier.

3) Promotion of SUDS: The Bill will make it a requirement that new developments incorporate SUDS where practical. A new system for their approval, adoption and maintenance by LLFAs is proposed. The City Council will be responsible in the future for SUDS systems that serve more than one property. A set of National Standards (effectively criteria for assessing the suitability of a SUDS scheme) is proposed, which is due for public consultation before the summer of 2010. This process will require the planning service gaining a more detailed understanding of SUDS systems, both because the approval function is likely to sit within the planning department, and because there will be an enhanced duty to promote them. SUDS schemes need to be considered by developers early in the site development process – their layout is generally governed by topography and they can inform the layout and location of buildings within the development. It is anticipated that RH&T will be responsible for the adoption and future maintenance of these schemes, under the proposed Flood Risk Manager. The Bill does not make it clear how long term maintenance will be funded – this will need to be investigated in more detail.

4) Automatic right to connect to a foul or surface water sewer: Currently, under Section 106 of the Water Industries Act 1991 an individual has a right to connect their drainage system to the foul or surface water sewer following liaison with the relevant Water Company. It is proposed to remove this right, to effectively give point 3 above teeth – systems will only be able to connect to public sewers where they have complied with the National Standards for SUDS. As well as the covered in point 3

above, future City Council development schemes will be covered by this requirement such as Building Schools for the Future and possibly future highways developments.

5) Regional Flood Defence Committees (RFDC): The EA is required to gain approval for the carrying out of much of its flood defence work through the RFDC, which is a body to oversee this work. RFDCs can also set levies on local authorities to provide funding for future flood risk alleviation work. It is proposed that the responsibilities of these committees are widened to include coastal flooding and that statutory schemes of membership are drawn up so that RFDCs retain a local authority majority. Councillor Kitterick, Cabinet Lead for Regeneration and Transportation, currently represents the City Council on the RFDC. The wider responsibility to include coastal flooding has no effect on the City, and as the City Council already has a representative, it is unlikely that these responsibilities will be altered.

6) Designation of third party assets: The EA, LLFAs, Water Companies and Internal Drainage Bodies will be able to designate developments as structures which have an impact upon local flood defence. Consent would then be required for their alteration or removal. The EA currently operates a system similar to this for structures which they do not maintain, but which are integral to their systems. The proposal is to widen this so that structures such as embankments, walls and the like which have an impact upon local flood risk can be designated. The City Council, should it wish to designate any such structures, will need to have the technical skills to understand their impact upon local flood risk, as well as the engineering skills to be able to establish whether they are in good state of repair, and the implications of proposals to alter them. Currently it is not proposed that the owner of these assets would be required to maintain them to a certain level of repair, which may mean the City Council, or other body who designated them being liable for these costs. It is currently unclear where in the City Council this role should sit although a detailed technical knowledge of these structures will be necessary.

7) Preparation of Preliminary Flood Risk Assessments: The 2007 EU Directive requires member states to carry out preliminary flood risk assessments, to be followed up by more detailed assessments of areas at higher risk and the preparation of flood hazard and flood risk maps. The EA will be responsible for the coordination of this, although the City Council will be responsible for local flood risk assessment, mapping and planning with relation to ordinary watercourses, surface run off and groundwater. The Directive does not require the preparation of further assessments where they already exist, so local flood risk is the only area which has not already been covered. Areas at higher risk of flooding will then require further study and mapping. This requirement can be met by the preparation of Strategic Flood Risk Assessments to the level set out in PPS25. Work on procuring an updated, compliant SFRA is underway in conjunction with RH&T, so it is unlikely in the short term that this requirement will have a significant further impact upon the City Council.

8) A risk based approach to reservoir safety: The Bill proposes to alter the current procedure for the classification of the risk that reservoirs over 10,000m³ pose. The presentation from the LRF at the last meeting confirmed that there are three flood storage reservoirs in the city over this volume. We anticipate that their current low risk

classification would continue as they are mainly below ground level, so it is unlikely that an enhanced maintenance regime will be necessary.

2.2 Flood Risk Regulations 2009

- 2.2.1 Statutory Instrument 3042 came into force on the 10th December 2009, as reported in Appendix D of the minutes of the last meeting. As well as defining the City Council as a Lead Local Flood Authority, the Instrument enforces the mapping required by the EU directive and the draft Bill, as laid out in Point 7 above, and the previous minutes.
- 2.2.2 As has been mentioned, this requirement can be met by the production of a Level 2 Strategic Flood Risk Assessment. PPS25, which contains national guidance on how the land use planning system should consider flood risk, requires local authorities to carry out SFRAs to provide a higher level of detail to the mapping produced by the EA, which until recently considered fluvial flood risk only. PPS25 sets two levels of SFRA. Level 1 SFRAs should pull together data from existing sources and historical flooding information to produce a local picture of flood risk and where necessary investigate the impact of climate change on allocated development sites at risk of flooding. The more detailed Level 2 SFRAs should be undertaken where there is pressure for development, and it is not considered possible for all future development to be located outside areas at risk of flooding. A Level 2 SFRA should look at the data sources that a Level 1 assessment looks at, plus any further modelling which may be required to understand the interactions of flood defence systems, the sewer network and surface runoff.
- 2.2.3 In 2004, the planning service undertook a SFRA, prior to the publication of guidance in PPS25. The resulting document, which focussed primarily on fluvial flooding and the regeneration areas in the City Centre, is regarded by the Environment Agency as the best available flood risk information for the City, and is used as the basis for assessing the risk that new developments are at from flooding.
- 2.2.4 The Planning and Compulsory Purchase Act 2004 required all local planning authorities to prepare Core Strategies and Local Development Documents to plan future growth and development within their boundaries. The City Council is currently at the stage where the Core Strategy, which has been considered by Council, is being submitted to the Secretary of State to test its soundness. Once this has occurred, the next stage is essentially to produce a document specifying what forms of development are suitable in different locations of the City. Flood risk is a factor that needs to be considered in this process, and a Level 2 SFRA will be required to inform the allocation of sites for development in Leicester's case.
- 2.2.5 The modelling that a Level 2 SFRA requires is the same as that required by a Surface Water Management Plan. The planning service and RH&T are jointly taking forward the procurement of this as reported to your last meeting. It is anticipated that this modelling will allow the preparation of a SWMP and SFRA which should meet the requirements of the Planning and Compulsory Purchase Act, the Flood Risk Regulations and the more detailed assessment necessary in the Flood and Water Management Bill.

2.2.6 As reported in the minutes of the last meeting, the Environment Agency has made available details of their preferred contractors and framework contract arrangements, which we propose to use as the basis for preparing a tendering document. A brief for the technical modelling is being prepared in conjunction with the EA, and a brief for the SFRA is being prepared by the planning service. The target date for the completion of the procurement process is the end of May 2010.

2.3 General Permitted Development (Amendment No. 2) Order 2008

2.3.1 The General Permitted Development Order (GPDO) sets out certain works which are “exempt” from planning permission – termed permitted development. The vast majority of these are limited to development within the boundary of a single house. The above amendment to the order means that to surface more than 5m² of the front garden of a house with a non-porous material needs planning permission (if not designed to drain to a “soft” area in the garden).

2.3.1 Guidance in PPS25 indicates that permission should only be refused for these works where there is a known risk of surface water flooding. The only mapping currently available which shows the risk of surface water flooding is that published by the EA (Areas Susceptible to Surface Water Flooding 2009) which is not at a detailed enough scale to be able to be used on a site by site basis. The proposed SFRA and SWMP will address this deficiency by providing more detailed mapping, so where there is a defined risk, planning permission could be refused.

2.3.2 This regulation only covers hardstanding in the front garden of houses. The City Council could, for areas which the SFRA and SWMP consider at high risk, make it necessary to apply for planning permission to carry out any hardstanding within the boundary of a house in an area at risk of flooding. Once adequate data is in place to fully assess this, it can be considered whether or not this approach could be taken in certain areas.

2.4 Code for Sustainable Homes

2.4.1 The code for sustainable homes is a government run scheme to assess new developments against a number of different criteria, to promote zero carbon development. The programme is administered through the Building Control service of the City Council, although targets are included in the draft Core Strategy. The Building Regulations, which govern construction standards for new development, will be gradually tightened to achieve zero carbon for all new homes by 2016.

2.4.2 The code includes criteria to assess the effective use of water, and how surface water run off is managed. Regarding the latter, all homes assessed must ensure that the level of run-off is no greater than before the site was developed. For larger developments, there are more stringent requirements, including taking the effects of climate change into account.

2.4.3 Whilst this scheme will be administered through the Building Regulations regime, it is likely that there will be implications for the planning service – either some of the systems to manage run off will require planning approval, or details of this could be

submitted with a planning application. It may also be necessary to work more closely with the Building Control service as many of these issues could have an impact upon both departments.

3.0 Early Actions to be taken & Action Plan

3.0.1 The planning service supports the actions proposed in Appendix D of the last Task Group meeting. Since that date, meetings between RH&T have been ongoing.

3.1 SFRA & SWMP

3.1.1 Procurement of the fluvial and pluvial modelling to underpin the SFRA and SWMP and the SFRA document itself is being progressed in conjunction between the two departments.

Timescales

3.1.2 Part of the funding, as reported, comes from the New Growth Point fund which is available next financial year (April 2010). Whilst it has been ring-fenced for this project, we are advised that it would be prudent to contractually commit the funding as soon as possible to safeguard it, given the economic climate and the potential for a change in government in the coming months. Similarly, as mentioned in paragraph 2.2.4 future documents to be prepared by the end of the year by the planning service will rely on these studies. To this end, briefs for the documents are being prepared, in the hope to tender through the Environment Agency's lists of preferred service providers and a project team or steering group is to be organised under Martin Fletcher. The lessons learnt from previous SFRA's and SWMP's demonstrate that early liaison with partners may prevent the duplication of work already carried out.

3.2 Recording of flooding events

3.2.1 The Bill suggests that the City Council should record the extent and severity of flood risk events within the City, in order to inform emergency procedures and flood risk modelling. Similarly, any records of historical flood events held by the City Council will need to be made available under the duty to share information.

3.2.2 The planning department has no historical records of flood events, although some are held in Regeneration, Highways & Transport in an informal manner. The 3 Cities DAMP (Drainage Asset Management Programme) will include a database to archive this information.

3.3 Promotion of SUDS and skills

3.3.1 The new legislation will require a better knowledge of SUDS systems in all relevant City Council services. The ongoing Regeneration, Highways & Transport review will hopefully confirm the provision of a Flood Risk Manager, and works are ongoing within the planning service to develop skills. RIEP (Regional Improving Efficiency Programme) has provided funding for training aimed at raising the awareness and

commitment to SUDS among senior managers and Members, and the skills of officers who may be dealing with schemes across Leicestershire.

- 3.3.2 In the future, it is anticipated that liaison between other City Council departments and the planning service will be necessary to embed a better understanding of how such schemes work, so that the City Council can meet commitments to the Code for Sustainable Homes and the Bill. Once the Bill has been enacted, it is likely that further guidance will be published as to how local authorities' are expected to operate the Third Party Assets scheme.

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