

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

16 May 2012

Report of the Director of Planning, Transport & Leisure

Part 1- Public

Matters for Information

1 FLOOD & WATER MANAGEMENT ACT 2010

Summary

This report provides an update on recent measures implemented under the Act affecting the management of ordinary watercourses.

1.1 Introduction

1.1.1 The Flood and Water Management Act 2010 (FWMA) is being implemented in stages. On 6 April 2012, several paragraphs of the Act came into force effecting amendments to the Land Drainage Act 1991 (LDA) and concern the management of Ordinary Watercourses.

1.1.2 Ordinary Watercourse is the term used for all natural watercourses which have not been designated as Main River which are managed by the Environment Agency (EA). Ordinary watercourses form an important part of flood risk management and the key management aspects can be summarised as follows:

- Consenting and enforcement of consents (LDA Sect. 23, 24)
- Maintaining Flow and enforcement (LDA Sect. 25, 26)
- Carrying out works to maintain, improve or construct new (LDA Sect. 14)

These important aspects are discussed below.

1.2 Ordinary watercourse consents under the LDA

1.2.1 Consent is required to erect or alter anything which will affect the flow in a watercourse such as a culvert or weir. Previously the powers to issue consents and to enforce them outside of Internal Drainage Districts were held by the EA. These powers have now passed to the Lead Local Flood Authority (LLFA) which is Kent County Council.

1.3 Powers to require works to maintain flow of a watercourse under the LDA

- 1.3.1 The powers to maintain flow in ordinary watercourses, outside of Internal Drainage Districts has also passed to LLFAs. Previously the powers were held by district councils.

1.4 Powers to carry out works under the LDA.

- 1.4.1 Section 14 of the LDA grants powers to maintain or improve existing ordinary watercourses and to construct new works on the same. These powers are retained by district councils and Internal Drainage Boards within their areas but are not available to the LLFAs who only have works powers in relation to surface water and ground water.

1.5 Designation of flood risk features under the FWMA

- 1.5.1 This is a new measure to assist with the management of ordinary watercourses.
- 1.5.2 Schedule 1 of the FWMA makes the Borough Council a 'designating authority' which permits the Council to designate a structure or natural or manmade feature which we think the existence or location of affects flood risk.
- 1.5.3 The effect of designation is that a person may not alter, remove or replace a designated feature without the consent of the designating authority.
- 1.5.4 In the past, there have been instances where walls or banks have been altered or removed increasing flood risk and so this provision is a welcome addition.

1.6 The future management of ordinary watercourses

- 1.6.1 Prior to the FWMA, the flood risk management of ordinary watercourses was fragmented, with consents and maintenance of flow enforcement being carried out by separate authorities. Bringing both functions under the LLFA is an improvement although the LLFA is still without any works powers for ordinary watercourses and so is still unable to deliver a complete 'service'.
- 1.6.2 Unfortunately, county councils as LLFAs do not generally have the resources or the detailed local knowledge to effectively manage extensive networks of ordinary watercourses. The trend across the country therefore is that county councils are delegating their powers for watercourse management to district councils and drainage boards. In Kent, preliminary discussions have taken place with district engineers and KCC wish to investigate potential agency agreements to allow districts to continue enforcement and assume the consenting role. This is at a very early stage and will raise resource and management issues that will need very careful consideration by officers and members should anything further progress.
- 1.6.3 In the Borough of Tonbridge & Malling, flood risk management of ordinary watercourses has been mainly a low key, low cost activity with a preference for

advice and assistance over legal action. Nevertheless, the service has been very valuable for residents plagued by persistent flooding problems.

- 1.6.4 Recent work completed includes a culvert screen chamber at Pratling Street, Aylesford in November 2011 and the clearance of a section of the Busty Stream at Ightham in December 2011. In addition, we have worked with KCC Highways and others to solve long standing road flooding problems; most recently the Ryarsh village drainage improvements in Feb/March 2012.

1.7 Conclusion

- 1.7.1 Clearly, despite the changes in legislation, the Borough Council has an important continuing role in flood risk management and ordinary watercourses. We have the new power to designate flood risk features and are the only authority with the works powers for ordinary watercourses. In the future we may be offered an agency agreement with KCC for delegation of powers and I will keep members informed of any developments in this context.

1.8 Legal Implications

- 1.8.1 The Land Drainage Act 1991 has been amended by the Flood and Water Management Act 2010 as has been described above.

1.9 Financial and Value for Money Considerations

- 1.9.1 None arising from this report.

1.10 Risk Assessment

- 1.10.1 n/a

1.11 Equality Impact Assessment

- 1.11.1 See 'Screening for equality impacts' table at end of report

Background papers:

contact: Steve Medlock

Nil

Steve Humphrey
Director of Planning, Transport & Leisure

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against	No	No decision is being made or recommended.

Screening for equality impacts:		
Question	Answer	Explanation of impacts
different groups in the community?		
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	No decision is being made or recommended.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		n/a

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.