

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL – 9 AUGUST 2018
REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING
AND GOVERNANCE)

RESPONSE TO CONSULTATION ON HERTFORDSHIRE LOCAL FLOOD RISK
MANAGEMENT STRATEGY 2 (LFRMS2)

1 Executive Summary

- 1.1 As Lead Local Flood Authority (LLFA) for Hertfordshire, the County Council must produce a Local Flood Risk Management Strategy which sets out how local flood risk from surface water, ground water and ordinary watercourses (brooks and ditches) will be managed in the county by all the authorities involved. This is Hertfordshire's second Local Risk Management Strategy (LRMS) and builds on the information and experience gained over the last five years. The LFRMS2 was published for consultation on 18th June for 10 weeks, until the 24th August 2018. The link to the document and the executive summary is set out below.
- 1.2 The management of local flood risk does not lie with any single organisation so the LLFA has to work with other bodies to best manage local flood risk in Hertfordshire. Welwyn Hatfield Borough Council is defined by legislation as a Risk Management Authority and must act consistently with the strategy when managing flood risk from ordinary watercourses and have due regard for it when carrying out planning and emergency planning functions, which have an impact on flood risk.
- 1.3 This reports briefly summarises the key principles of the LFRMS2 and sets out the key issues in the Council's response. The response to the specific consultation questions is detailed in Appendix A to this report.
- 1.4 Broadly, the Council supports the intentions of the strategy and welcomes the collaboration with the LLFA to manage local flood risk. However, there are a number of key issues where the strategy could be improved. These include ensuring a consistent and effective approach to the maintenance and operation of SuDs, refining an approach to ensuring surface water management is considered for minor planning applications in high risk areas, further exploring funding opportunities from S106 money and better regulating development on or above ordinary water courses. The Council make recommendations about actions and mechanisms to address these issues and aim to work collaboratively with the LLFA to take forward solutions.

2 Recommendation(s)

- 2.1 That the Panel agrees the consultation response set out in section 4 and Appendix A of this report.

3 Background

Roles and responsibilities

- 3.1 Hertfordshire County Council is the Lead Local Flood Authority (LLFA) in Hertfordshire and has powers to manage flood risk from surface water and ground water and the lead responsibility for managing flood risk from ordinary water courses (brooks, ditches). As part of this duty the County Council has a statutory responsibility to develop, maintain, apply and monitor a Local Flood Risk Management Strategy (LFRMS) for local flood risk management. Other duties as LLFA include:
- Preparing reports and plans to meet legislative requirements.
 - Carrying out flooding investigations where appropriate
 - Keeping a public register and record of all structures and features which have a significant effect on flood risk.
 - Regulation of ordinary watercourses.
 - Statutory consultee on surface water drainage and flood risk for major developments
- 3.2 After major flooding in 2007 the Pitt Review recommended enhancing local leadership. As a result, lead local flood authorities were designated to manage flood risk by The Flood and Water Management Act 2010. The Environment Agency plays a key role in the management of all sources of flooding and is responsible for managing the risk of flooding from main rivers and reservoirs.
- 3.3 Welwyn Hatfield Borough Council is defined by legislation as a Risk Management Authority and as such has responsibility for emergency planning in relation to flood incidents. It must act consistently with the strategy when managing flood risk from ordinary watercourses and must have due regard to it when carrying out other functions which have an impact on flood risk.
- 3.4 As a planning authority, there are a number of responsibilities this Council has relating to flood risk. The Council has taken full account of the sequential approach to flood risk management in the Local Plan, consistent with national policy. It has worked with the Environment Agency and Hertfordshire County Council to develop a Strategic Flood Risk Assessment (SFRA) that has helped direct development to the areas with the lowest probability and risk of flooding. At the planning application stage flood risk must also be addressed and since 2015 the Council has a duty to consult Hertfordshire County

Council (as LLFA) in relation to surface water management and flood risk from major new development.

- 3.5 Welwyn Hatfield Borough Council also has powers to carry out works on ordinary watercourses and make by-laws relating to ordinary watercourses.
- 3.6 Water and Sewerage Companies, Herts Highways and property owners also have responsibilities related to local flood risk management.

Local Flood Risk Management Strategy (LFRMS)

- 3.7 The first LFRMS was published in 2013 at a time when there was no consistent approach to the management of flood risk in the county. Since the last strategy the national mapping of predicted surface water flood risk have been updated and a number of studies and investigations have been undertaken relating to surface water flooding¹, flooding events and the assessment and monitoring of ordinary watercourses. The LLFA is also now a statutory consultee on major planning applications and has worked with partners on a range of projects. The LLFA has now been in place for seven years and the knowledge and experience gained has informed the strategy review.

4 Explanation

- 4.1 Hertfordshire County Council is currently consulting on the reviewed Local Flood Risk Management Strategy (LFRMS2) until 24 August 2018. The aim of the strategy is to give an understanding of local flood risk and the most appropriate actions that will be taken to manage it within available resources. Additions and changes to the last strategy include:

- Proposals for strategic partnership working on flood risk
- Commitment to publish the best available surface water data
- Updated policies to regulate ordinary watercourses
- Clarification on when flood investigations will be undertaken and the function of the register of structures and features
- New information about funding mechanisms
- Updated policies relating to Sustainable drainage

- 4.2 The strategy outlines the main sources of flood risk and is informed by the second Preliminary Flood Risk Assessment for Hertfordshire, published by the LLFA in 2017, which indicated that the main local flood risk is from surface water and it is distributed across the county. In Welwyn Hatfield 2,478 properties are considered to be at high risk (1 in 30 or 3.33% chance in any year) and 6,027 properties are deemed to be at medium risk (1 in 100 or 1%

¹ Surface Water Management Plans for Welwyn Hatfield, Three Rivers, Hertsmere and Stevenage are underway and due to be complete in 2019.

chance in any year). Ordinary watercourses and ground water only represent a small proportion of reported flooding.

- 4.3 The LFRMS2 sets out 6 key principles, which are supported by a series of aims, policies and actions. These principles broadly relate to managing and reducing flood risk, working in partnership with other bodies and engaging with the community, improving resilience and response to flooding and managing surface water flood risk in new developments. A brief summary of the principles is set out below, including any new policies or actions.

Principle 1: Taking a risk-based approach to local flood risk management

- 4.4 The overarching aim of the LLFA remains to actively predict and manage future flood risk as well as reacting to flood events.

Principle 2: Working in partnership to manage flood risk in the county

- 4.5 In the previous strategy, the LLFA set out the intention for partnership work and this approach is carried forward into this Strategy. In recent years the LLFA has worked with Welwyn Hatfield Borough Council and other Hertfordshire local authorities to provide guidance on strategic flood risk assessments, develop Surface Water Management Plans, respond to planning applications and liaise with Hertfordshire Planning Group.

- 4.6 This strategy aims to enhance partnership working by working more with community groups and setting up a countywide strategic flood risk partnership as a sub group of the Hertfordshire Infrastructure and Planning Partnership (HIPP) to address strategic themes arising from the significant development planned in and around Hertfordshire.

Principle 3: Improving our understanding of flood risk to better inform decision making

- 4.7 The LLFRS2 aims to improve understanding of the sources of flooding in Hertfordshire and use an evidence based approach to prioritise analysis of those areas most at risk of flooding.

The key proposal identified is to improve the accuracy of the Risk of Flooding from Surface Water (RoFfSW) mapping by submitting locally derived flood risk modelling (such as from the Surface Water Management Plans) to the Environment Agency so it can be incorporated into the RoFfSW mapping.

Principle 4: Supporting those at risk of flooding to manage risk

- 4.7 There will always be some level of flood risk that can't be solved. So the LFRMS2 aims to increase the information provided to communities and individuals about how to protect their properties. They intend to achieve this aim by working with members of the emergency planning partnership Herts resilience (the local Resilience Forum), which is a partnership of 60 organisations.

- 4.8 There is also detail about the LLFA's flood investigation process, to enhance clarity about the process.

Principle 5: Working to reduce the likelihood of flooding where possible

- 4.9 This section primarily relates to ensuring that on the basis of local information, funding is directed to areas most at risk and that flood risk management projects are prioritised according to cost-benefit. Structures and watercourses should be identified, appropriately monitored and maintained.

- 4.10 To help reduce the likelihood of flooding the LFRMS2 seeks to improve the regulation of development above or adjacent to ordinary watercourses (OWC), set up a new fund to facilitate the improvement of failing assets that could increase flooding on OWCs and address funding challenges by exploring alternative approaches to larger surface water projects such as natural flood management which aims to slow flow in surface water catchments and watercourses.

Principle 6: Ensuring that flood risk arising from new development is managed

- 4.11 This section aims to ensure that new development does not increase flood risk within or outside a site and that sustainable urban drainage (SuDs) can be managed and maintained for the lifetime of the development. It incorporates a series of policies from the LLFA's SuDS Policy Statement, which was revised in March 2017 and is currently being used. These are as follows:

- Run-off destination- Policy 13: Discharge hierarchy for SuDs
- Peak flow and Volume Control- Policy 14 Runoff rates for greenfield sites
- Peak flow and Volume Control- Policy 15 Runoff rates for previously developed sites.
- Flood risk within & Outside development- Policy 16- Flooding on or from
- Managing Overland Flow Routes- Policy 17 Development sites along natural flow routes and in existing flood risk area
- Maximise resilience and source control-Policy 18: SuDs to be designed at or near the surface
- Drainage during construction period- Policy 19: Construction arrangements
- Maintenance, structural integrity and construction- Policy 20: SuDs to have a design life compatible with the development and in include a management and maintenance plan.

- Sustainability and additional design criteria- Policy 21: SuDs to have wider benefits

4.12 As outlined above, since April 2015, the LLFA is a statutory consultee on surface water drainage in relation to major planning applications. The LLFA does not normally comment on minor application but the LLFMS2 proposes working with LPAs to consider when it would be desirable to consult on minor applications.

Welwyn Hatfield's consultation response

4.13 Welwyn Hatfield's proposed response to the consultation questions is set out in Appendix A. This incorporates comments from the Council's emergency planning team relating to responding to flooding. From a planning perspective the key issues raised by the LFRMS2 are set out below.

Updated policies relating to Sustainable Drainage

4.14 The SuDs policies are in line with national policy and guidance and should be supported. They seek to ensure that new development addresses surface water flooding and does not increase the risk of flooding within or outside the development. The recognition of the wider benefits of SuDs in terms of water quality and amenity should also be welcomed and is consistent with the approach taken in the Local Plan

4.15 Whilst support should be given for the aims of Principle 6 there is concern about how effective maintenance regimes will be in practice. This issue is recognised in section 4.6 of the LFRMS2 which identifies that there is a significant problem with how to ensure that the SuDs will be maintained when they are operated privately. The LLFA provides advice to the LPA on the surface water flood risk and ensures surface water from any new development is managed using sustainable urban drainage (SuDs). Welwyn Hatfield Borough Council is responsible for assessing that the maintenance and operational arrangements proposed are suitable for the lifetime of the development. Proposals are then enforceable via planning conditions. This is an issue that could be helpfully addressed by a consistent approach across Hertfordshire. Welwyn Hatfield Borough Council support an approach which designates new SuDs onto the LLFA assets register as they are important assets for managing local flood risk across the county. This designation would ensure their condition is monitored annually and that the SuDs are working effectively. It is suggested that an action to this effect is included in the LFRMS2.

4.16 Aim 6c is supported in principle as where possible it is desirable for new development to reduce existing flood risk within the local area. However, it is not possible to *require* new development to address existing problems unless it can be demonstrated that such measures are necessary for the development to occur. Nevertheless there maybe opportunities which new development provides to address such risks.

Consultation on minor planning applications

- 4.17 Action 9, which seeks to explore the potential for consulting on minor applications is consistent with Policy SADM14 of the submission Local Plan. Policy SADM14 requires major developments and *areas of risk of flooding* to deliver SUDs. Therefore the intention to define areas where it would be desirable to consult on minor applications is supported but more clarity and consideration about what this will involve is needed. If further local modelling has been done on these areas, it might be possible to define more accurate areas. It would be helpful if this detail was considered in the supporting text and also consideration of mechanisms and timescales for taking this forward. Surface Water Management Plans could be used in the future to help refine higher risk areas where SuDs should be considered for minor developments. One mechanism to take the issue forward would be discussing it at the countywide strategic flood risk partnership.

Regulation of ordinary watercourses

- 4.18 The LLFA hold the power for consenting and enforcing ordinary watercourses, but Welwyn Hatfield Borough Council holds the powers to manage flood risk from ordinary watercourses under S14A of the Land Drainage Act 1991. Activity within a watercourse can be regulated by the LLFA (para 4.17) but works above or adjacent to the channel are outside the LLFA powers and may be regulated at borough level through bye-law provision or if works require planning consent.
- 4.19 There is not a standardised approach across the county. Welwyn Hatfield Borough Council is one of only three Hertfordshire local authorities with bye-laws in place, but they are over 20 years old and have been mostly superseded by legislation. Therefore they are not applied or resourced and as such there is no control of development over or adjacent to ordinary watercourses other than through the planning system. The LFRMS2 outlines that one option to resolve this issue would be to use powers under S13 of the Flood Water Management Act for this function to be exercised on our behalf by the LLFA.
- 4.20 As set out in section 5 below there are legal implications associated with such a course of action. It is considered that further discussions on the issue of bye-laws, possible delegation of power and the best way forward should be held to enable the Council to better understand the implications for this authority.

Funding proposals

- 4.21 It is recognised that, given the challenges of funding, schemes have to be delivered on a priority basis. As long as it can be resourced, a small projects fund seems a good low-cost approach for ensuring critical flood risk assets are repaired and maintained to ensure they reduce local flood risk.
- 4.22 Availability of funding is clearly a critical factor in ensuring schemes come forward to minimise flood risk. Given the scale of development coming

forward in Hertfordshire in the future, there may be opportunities to secure S106 money to help fund schemes that reasonably relate to the proposed development. It could be helpful if a list of potential schemes were made available to inform discussions with developers and help local planning authorities determine the best strategy available to minimise flood risk at the site specific level.

Improved flood map data

- 4.23 Welwyn Hatfield Borough Council supports the incorporation of local surface water modelling data into the Environment Agency mapping. However, the council recommends that the role of Strategic Flood Risk Assessments is also acknowledged as a local resource for ordinary watercourse modelling. This data is also submitted to the Environment Agency.

5 Legal Implication(s)

- 5.1 There are legal implications associated with the issue of ordinary watercourses. There is a statutory process to follow if the Council intend to revoke the bye-laws. Further legal investigation will be needed to determine the correct procedure.
- 5.2 Equally, the council can delegate its power/function to another public body. This would require a review of the statutory provisions that apply, member approval and a service level agreement to be put in place in place.

6 Financial Implication(s)

- 6.1 There are no financial implications arising directly in relation to this report.

7 Risk Management Implications

- 7.1 There are no risk management implications as a result of this report.

8 Security & Terrorism Implication(s)

- 8.1 There are no security and terrorism implications arising directly in relation to this report.

9 Procurement Implication(s)

- 9.1 There are no procurement implications arising directly in relation to this report.

10 Climate Change Implication(s)

- 10.1 There are no climate change implications arising directly in relation to this report. However, proposals to manage local flood risk will help the borough adapt to the implications of climate change.

11 Policy Implication(s)

- 11.1 Policy SADM14 of the Local Plan requires SuDs to be delivered for major development and other development in high-risk areas. This policy has been debated at the Examination and the approach was not raised as a concern. This strategy is a mechanism for achieving the policy requirement by addressing how requirements for SuDs in some minor applications in high-risk areas could BE applied in practice.

12 Link to Corporate Priorities

- 13.1 The Council's Business Plan 2018-2021 contain a corporate priority to maintain and to protect and enhance the environment. The production of a new strategy to manage local flood risk is broadly aligned with the Council's vision in these areas.

13 Equality and Diversity

- 13.1 An Equality Impact Assessment (EIA) has not been carried out in connection with the proposals set out in this report because it concerns the proposals of another local authority.

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25th July 2018

Appendices

Appendix A: Response to LFRMS2 consultation questions

Background Papers

Hertfordshire Local Flood Risk Management Strategy 2 (LFRMS2) Draft, 2018 and Executive Summary

<https://www.hertfordshire.gov.uk/about-the-council/consultations/environment/local-flood-risk-management-strategy-2018.aspx>

Draft Local Plan Proposed Submission, 2016

Welwyn Hatfield Strategic Flood Risk Assessment, 2016