

Agenda Item No. 4(f)

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND  
INFRASTRUCTURE**

**7 July 2015**

Report of the Strategic Director – Economy, Transport and Environment

**DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT –  
FURTHER CHANGES TO STATUTORY CONSULTEE ARRANGEMENTS  
FOR THE PLANNING APPLICATION PROCESS – CONSULTATION  
RESPONSE AND MINISTERIAL RESPONSE**

(1) **Purpose of Report** To update the Cabinet Member on the outcome of the Department for Communities and Local Government (DCLG) consultation on proposed changes to the statutory consultee arrangements in relation to surface water drainage and the implications for Derbyshire County Council.

(2) **Information and Analysis** For many years, the County Council has been expecting to become a Sustainable Drainage Systems (SuDS) Sustainable Approving Body (SAB) and would have been responsible for approving, adopting and maintaining SuDS for new developments. The purpose of SuDS is to mimic natural drainage, significantly reduce surface water run-off and improve water quality. Implementation of this legislation (Schedule 3 Flood Water Management Act 2010) (FWMA) was delayed and is now unlikely to ever become enacted by Parliament.

A number of consultations were launched by Government last year on measures aimed at ensuring more effective provision of advice to local planning authorities in relation to surface water drainage management. A consultation entitled 'Delivering Sustainable Drainage Systems' was released by the Department for Environment, Food and Rural Affairs (Defra) on 12 September 2014, proposing that the existing planning system be used to implement SuDS in place of the SAB previously proposed under Schedule 3 FWMA 2010. The Flood Risk Management Team (FRMT) consulted internally and returned a response on behalf of the County Council 24 October 2014.

Following the consultation, a detailed response and written Ministerial Statement was released on 18 December 2014 confirming that the proposals to amend Planning Practice Guidance (PPG) and make Local Planning

Authorities (LPAs) responsible for SuDS implementation would come into force from 6 April 2015.

In conjunction with the Ministerial Statement, a second consultation was released by the DCLG on 18 December 2014, proposing that Lead Local Flood Authorities (LLFAs), of which the County Council is one, be made statutory consultees to the planning process in relation to sustainable drainage.

Again, the Council's FRMT consulted internally and returned a response to this consultation on behalf of the County Council on 29 January 2015.

### **Derbyshire County Council's Response to Consultation and Key Concerns**

Listed below are some of the key points identified within the consultation response:

- The County Council agreed with DCLG that the LLFA should become a statutory consultee in relation to surface water drainage. This would give the County Council greater influence in flood risk management when considering the new housing and commercial development required for economic growth across the County.
- The proposals only related to the County Council becoming a statutory consultee to planning applications in relation to surface water drainage. The Council's response suggested that the role be extended to incorporate all local sources of flooding covered by LLFA responsibilities, namely ordinary watercourses and groundwater.
- The key concern expressed in the Council's response to DCLG centred on the resource and funding for the new duties. It was stated that the County Council will only be in a position to provide evidence based responses to planning applications based on established national and local datasets, and local experience if appropriate funding is in place in advance of the date of implementation. At the time of the consultation, no information was provided as to the level of funding that would be made available for LLFAs for the new duties. The Council strongly recommended that DCLG provided information on the level of funding to enable Derbyshire County Council and other LLFAs to appropriately prepare for the new duties.
- The Council also strongly recommended to DCLG that information is provided to inform LPAs on how an application should be validated to ensure that appropriate information is submitted to LLFAs and planning applications are not held up unnecessarily in this way. It stressed that SuDS should be required as part of the validation process in accepting a planning application and that SuDS should be at least a local validation

requirement or, better still, a national requirement before a LPA can accept an application.

- Finally, the Council agreed with the proposed changes to the Environment Agency's (EA) role, as a statutory consultee, including the EA's duty to comment on planning application sites with an area greater than 1 hectare as the management of flood risk from local sources to such developments would be covered by the LLFA, allowing the EA to focus its resources towards development of flood risk from main rivers.

### **New Lead Local Flood Authority Statutory Consultee Role**

The Government's response to the consultation was published on 9 March 2015. In the response, DCLG recognised that there was strong support for making LLFAs a statutory consultee to the LPAs for planning applications in respect of surface water drainage. The consultation confirmed that LPAs would welcome the expertise and technical advice that will be provided to help reach their decision.

As of 15 April 2015, LPAs should consult LLFAs when considering planning applications for major developments, on the management of surface water and:

- satisfy themselves that the proposed minimum standards of operation for SuDS are appropriate; and
- ensure through the use of planning conditions or planning obligations that there are clear arrangements in place for ongoing maintenance of SuDS over the lifetime of the development.

The definition of major developments is contained in the Town and Country Planning (Development Management Procedure) (England) Order 2015 as follows:

*“major development” means development involving any one or more of the following—*

*(a) the winning and working of minerals or the use of land for mineral-working deposits;*

*(b) waste development;*

*(c) the provision of dwelling/houses where —*

*(i) the number of dwelling/houses to be provided is 10 or more; or*

*(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*

*(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*

*(e) development carried out on a site having an area of 1 hectare or more.*

The LLFA will be required to provide technical advice on the surface water drainage strategies and designs put forward for new developments. Discharging this statutory function will be the delegated responsibility of the Strategic Director for the Economy, Transport and Environment Department and will be undertaken by the FRMT who has already been commenting on planning applications as a non-statutory consultee and from a local flood risk perspective for around 10-12 months. This will formalise the arrangements the team has with LPAs and add weight to its comments which will, in the future, become a material planning consideration.

(3) **Financial Considerations** DCLG stated in its response that the Government has considered the funding and resource requirements on LLFAs and would publish a New Burdens Assessment. This assessment would establish the payment required to ensure that LLFAs have sufficient financial resources to meet the expectations of a statutory consultee. The New Burdens Assessment was released on 9 March 2015 and set out the financial assistance that will be provided to LLFAs for the new role.

Government awarded the County Council a grant payment of £81,604.90 in March 2015 to help support the role of the LLFA as statutory consultee for the planning application process, and confirmed that a grant payment of £13,000 would be provided in 2016-17 and every year thereafter. Due to the date that Defra made the grant offer and the short deadline set to accept the grant, the Chief Executive exercised his delegated powers to accept the grant on the Council's behalf.

The awarded grant will be utilised to fund future anticipated expenditure in respect of delivering this statutory function, in particular costs which may arise in the event of any legal challenge placed upon the County Council as a statutory consultee. In accordance with accepted accounting practice, the grant income will be deferred until the related expenditure is incurred.

Two service critical posts have been appointed to support the County Council in meeting the new requirements which has initially been met from the Flood Risk Management revenue base budget after undertaking in-depth financial re-profiling in the light of previous staff vacancies. It is to be noted that the current and projected workload associated with this statutory duty will need to be kept under constant review, given that the additional annual funding provided by Defra does not cover the full cost of these posts.

(4) **Legal Considerations** The County Council is legally obliged to provide the technical advice to LPAs as detailed in the consultation response and the amendments to Schedule 5 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 with effect from 15 April 2015.

(5) **Human Resources Considerations** This statutory requirement placed on the County Council has created a significant additional workload for the FRMT and put pressure on other flood risk management functions. Due to these resource pressures the Economy, Transport and Environment Departmental Management Team approved a business case to increase the resources within the FRMT. The approval has allowed for the internal appointment of a Project Engineer (Grade 11) and a Technician (Grade 8).

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file in the Economy, Transport and Environment Department. Officer contact details - James Biddlestone, extension 38563.

(9) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member:

- 9.1 Notes and endorses the response provided to the Department for Communities and Local Government on the County Council becoming a statutory consultee on surface water drainage matters, including concerns expressed and the implications this new statutory requirement has on the County Council.
- 9.2 Welcomes and acknowledges receipt of an Early Burden Grant for the sum of £81,604.90, accepted by the Chief Executive on 18 March 2015, to support the County Council in its new role as statutory consultee on surface water drainage matters.
- 9.3 Agrees to monitor the impact of this new duty and the resources required, in the light of the Government's commitment, to provide ongoing grant support.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Environment**