

## Cambridgeshire's Policy and Protocol for Enforcement Action under the Land Drainage Act 1991

To: Environment and Green Investment Committee

Meeting Date: 14 March 2024

From: Executive Director for Place and Sustainability

Electoral division(s): All

Key decision: No

Forward Plan ref: Not Applicable

**Executive Summary:** The Council's Flood Risk Enforcement Policy was adopted in March 2013. The policy sets out the criteria for enforcement intervention and the principles of regulation and enforcement. Given that the document is over the years old, the policy has been refreshed and updated to ensure it is up to date and still fit for purpose. The committee is asked to agree the 'Policy and Protocol for Enforcement Action under the Land Drainage Act 1991', to ensure officers can operate effectively and transparently to an agreed management policy.

**Recommendation:** The committee is recommended to:

Adopt the Policy and Protocol for Enforcement Action under the Land Drainage Act 1991, attached at Appendix 1 of this report.

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# 1. Creating a greener, fairer and more caring Cambridgeshire

- 1.1 Ambition 1: Net zero carbon emissions for Cambridgeshire by 2045, and our communities and natural environment are supported to adapt and thrive as the climate changes.

As the climate changes, the risk of flooding increases and the need to ensure proper maintenance of watercourses becomes even more important. The updated policy sets out a framework for educating those with a responsibility for watercourse maintenance to help deter them from wrongdoing that may increase the risk of flooding to other people.

- 1.2 Ambition 4: People enjoy healthy, safe, and independent lives through timely support that is most suited to their needs.

The consequences of flood risk impact on everyone, particularly the most vulnerable in society. The updated policy provides the framework for reducing flood risk through enforcement. The policy means the Council takes responsibility for its decisions and will justify them where appropriate.

## 2. Background

- 2.1 Cambridgeshire's Flood Risk Enforcement Policy (v1.1, attached at Appendix 2) was adopted by the Cabinet in March 2013. The aim of the policy was to:

- Clarify the Council's approach to flood risk management
- Define the criteria for enforcement intervention
- Explain the Council's principles for regulation and enforcement
- Explain the Council's flood risk enforcement process

- 2.2 The policy was to be read in conjunction with the 'Flood Risk Enforcement Process' which was appended to the policy.

- 2.3 The Council's enforcement powers, which derive from Sections 23, 24 and 25 of the Land Drainage Act 1991, were transferred to the Council in 2010 following the implementation of the Flood and Water Management Act 2010. Whilst these powers have not changed since the policy was adopted in 2013, knowledge and understanding of Cambridgeshire's water environment has advanced and the Council has much greater experience of dealing with contraventions than it did in 2013. The updated policy takes account of this experience (and that of neighbouring authorities) to ensure it is fit for purpose and accords with the Council's ambition to create a greener, fairer and more caring Cambridgeshire.

- 2.4 As with the previous policy, the approach is to educate those with a responsibility for watercourse maintenance, including landowners, developers, farmers, homeowners and businesses, to enable compliance. The desired outcome is always to ensure compliance through discussions and negotiations but where the Council is unable to make progress through these means, it will need to take actions to ensure that lives, properties and land are not put at undue risk. Such actions may include the serving of work's notices, prosecution or the Council carrying out remedial works itself. The document has been

updated to ensure the policy supports officers to work in a way that, wherever possible, achieves good outcomes at every point prior to formal action.

### 3. Main Issues

3.1 Key elements of the updated policy are set out below.

#### 3.2 Criteria for Enforcement Intervention

- The policy sets out the definition of 'enforcement' to mean any action the Council takes where it suspects an offence has occurred, or in some cases is about to occur. It also defines what is meant by 'remedial works' which the Council may be requiring landowners to undertake.
- An initial assessment process is outlined, which will enable the officer to establish whether a contravention meets the threshold for intervention.
- The updated policy outlines that there may be occasions where it is necessary to select initial assessments judiciously, such as during a major flood incident as occurred in December 2020.
- Unlike the previous policy, examples of contraventions have been included in the updated policy (section 3.2) to provide clarity on what may lead to enforcement action being taken.
- There is often an assumption that 'enforcement' means taking legal action, however this is not always the case. Instead, the Council will take a risk based and proportionate approach to choosing which enforcement action(s) to take. The new policy sets out the definitions of 'informal' action and 'formal' action. The experience of the Lead Local Flood Authority over the 14 years since the enforcement powers were transferred to the Council is that most contraventions can be resolved through informal action. However, it is recognised that this will not always be the case so formal action such as the issuing of notices, direct remedial action and prosecution remain an option (section 3.3).

#### 3.3 Principles of Regulation and Enforcement

- This section explains how the Council must take account of the Regulator's Compliance Code, including the aim to change the behaviour of the offender, to be responsible and consider what is appropriate for the offender/issue and be proportionate to the nature of the offence and harm caused.
- The principles of firm but fair regulation are outlined, including proportionality, consistency, transparency and accountability. To aid transparency and consistency, formal enforcement letter templates have been appended to the policy. It should be noted however that informal letter templates have not been appended, as these are tailored to the individual case.

### 3.4 Flood Risk Enforcement Process

- A clear process for enforcing under the Land Drainage Act 1991 has been included as an appendix to the policy. This provides a greater level of detail than the existing policy and distinguishes between high and low impacts on water quality, flow and flood risk, based on officers' professional judgement

### 3.5 More general updates to the policy include:

- Utilising the Council's most up to date document templates and accessibility requirements.
- Addition of a glossary of terms as it is recognised that terminology related to flood risk can often be confusing.
- A full review of the updated policy and enforcement process has been undertaken by Pathfinder Legal Services.

3.6 The Flood Risk team recently dealt with an enforcement case that was raised up to the Ombudsman. The Ombudsman found in the Council's favour that due processes had been correctly followed. The Council wants to ensure these processes are formalised into the new policy. As part of the review, the policy was cross-referenced with policies from surrounding Local Authorities including Norfolk County Council, Central Bedfordshire Council and Leicestershire County Council, which had been updated in the twelve months prior to commencing the Cambridgeshire County Council's update. These had also been through a full legal review/approval process.

## 4. Alternative Options Considered

4.1 The alternative option that has been considered is to 'do nothing' and continue with the flood risk enforcement policy as currently adopted. This was not considered appropriate, as the existing policy has been in place for over ten years without review. It would result in the continuation of outdated procedures in relation to flood risk enforcement and would not take account of changes in processes and experience gained by the Lead Local Flood Authority since its establishment in 2010.

## 5. Conclusion and reasons for recommendations

5.1 To have an up-to-date flood risk policy that is reflective of legislation, professional experience of officers and knowledge of flood risk in Cambridgeshire will ensure the Council can help prevent unnecessary flooding resulting from unconsented changes to watercourses across the county.

## 6. Significant Implications

### 6.1 Finance Implications

There are no significant risks arising from the proposed recommendations in this report.

### 6.2 Legal Implications

The Flood and Water Management Act 2010 requires the Council to manage flooding from Ordinary Watercourses, amongst other duties. The updated policy has been reviewed in full and approved by Pathfinder Legal Services.

### 6.3 Risk Implications

There are no significant risks arising from the proposed recommendations in this report.

### 6.3 Equality and Diversity Implications

An Equality Impact Assessment, attached at Appendix 3, has been undertaken which determined there are no significant risks arising from the proposed recommendations in this report.

## 7. Source Documents

7.1 The following documents have supported the development of the updated policy:

- Buckinghamshire Land Drainage Enforcement Policy - [Buckinghamshire Council Land Drainage Enforcement Policy | Buckinghamshire Council](#)

The policies of Central Bedfordshire Council and Leicestershire Council were also used but these are not available online at this time. Copies are held on the Council's network and can be viewed on request.